

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

APPLICANT'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND RELIEF REQUESTED

Applicant DaVinci Radiology Associates, P.L. ("Applicant"), respectfully demands the Trademark Trial and Appeal Board (the "Board") deny Opposer Intuitive Surgical, Inc. ("Opposer") summary judgment in this matter and hereby submits its memorandum brief in response to Opposer's motion for summary judgment. Applicant submits concurrently herewith the Declaration of Thomas P. Boyle, M.D. ("Boyle Decl.") and Declaration of Matthew T. Vanden Bosch ("Vanden Bosch Decl.") pursuant to 37 Code of Federal Regulations ("C.F.R.") §2.20.

Opposer admits that its word mark DA VINCI is dissimilar in appearance and sound from Applicant's mark DAVINCI DIAGNOSTIC IMAGING & Design; therefore, the parties' marks are dissimilar in their entireties. Second, Opposer uses its mark to sell goods, and Applicant's mark is used to sell services. Third, the parties use completely different trade channels, and their



buyers are different. Fourth, neither mark has any fame, and the words “DaVinci” and “da Vinci” are found in 153 live trademark records, some of which use the word on goods and services similar to the parties. Finally, the parties have used their marks for almost three years without a single incident of confusion, and there is no way for someone to be confused.

II. FACTUAL BACKGROUND

Applicant is a four-member group of radiologists, organized as a professional limited liability company under the laws of the State of Florida. Boyle Decl. at ¶4. In 2002, one of its members, Dr. Thomas P. Boyle (“Dr. Boyle”) developed the concept of a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting. *See*, Response to Interrogatory No. 2 of Applicant’s Response to Opposer’s First Set of Interrogatories attached as part of Exhibit A to Vanden Bosch Decl. Dr. Boyle and another former member of applicant, Dr. Howard Butler (“Dr. Butler), decided that the name of the imaging center had to be memorable, unlike other imaging centers that had names associated with medical institutions or geographic locations. *Id.*

Dr. Boyle and Dr. Butler decided to search for a name that had public recognition, connoted a high level of sophistication and intelligence, and would be memorable for its dissonance in the context of a medical imaging center. *Id.* They developed several options, including “The Tesla Imaging Center”, “The Newton Center for Imaging”, and “The DaVinci Center”. *Id.* They settled on either DaVinci or Tesla. *Id.* In late 2002, Dr. Butler read about the forthcoming blockbuster novel, *The Da Vinci Code*, and they decided that the DaVinci name would become more well-known because of the publicity associated with the book. *Id.* Because of this, they chose “DAVINCI DIAGNOSTIC IMAGING.” *Id.*

From 2003-2005, Medical Management of the Palm Beach, LLC, a Florida limited liability company ("MMPB"), consisting at that time of the same members as Applicant, constructed a building (the "Building") for Applicant's diagnostic imaging business. Boyle Decl. at ¶5. However, instead of owning and operating the diagnostic imaging business itself, on August 1, 2005, MMPB leased the Building and subleased diagnostic imaging equipment to Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB"), consisting of roughly 50+ physicians and operating exclusively within Palm Beach County, Florida. Boyle Decl. at ¶6; Supplemental Response to Interrogatory No. 3 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant, attached as Exhibit D to Vanden Bosch Decl.

Also on August 1, 2005, Applicant contracted with MSPB to be its exclusive independent contractor for purposes of performing MSPB's diagnostic imaging services at the Building and its existing imaging center location at 5401 S. Congress, Atlantis, Florida 33462. Boyle Decl. at ¶7. Diagnostic imaging services are non-surgical, non-interventional, imaging services; and, in this case, consist of magnetic resonance imaging (MRI), computed tomography (CT), positron emission tomography (PET), and digital mammography. *See*, Supplemental Response to Interrogatory No. 3 of Applicant's Response to Opposer's First Set of Interrogatories to Applicant, attached as Exhibit D to Vanden Bosch Decl. These services are performed under the care or supervision of a board-certified radiologist. *Id.*

Notwithstanding Opposer's conclusory statement at pages 9-10 and 22 of its motion, the only consumers of MSPB diagnostic imaging services under Applicant's mark are patients. *See*, Response to Admission No. 3 of Applicant's Response to Opposer's First Request for Admissions to Applicant attached as Exhibit C to Vanden Bosch Decl.; Response to

Interrogatory 16 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant attached as Exhibit A to Vanden Bosch Decl.

Further, notwithstanding Opposer's suggestion to the contrary at pages 9-10 & 22 of its motion, MSPB's websites are plainly aimed at patients, not physicians. Boyle Decl. at ¶8. MSPB's website speaks to the patient when it states "you and your physician." It does not read "you and your patient." The layman language is more proof that the websites are directed at the consuming public. Likewise, the language Opposer uses from MSPB's website in its motion at pages 9 – 10 is directed at the patient who is being informed how getting his diagnostic imaging services at DAVINCI DIAGNOSTIC IMAGING will benefit him and his physician. Applicant respectfully refers the Board to Exhibits L & M of the Declaration of Michelle J. Hirth ("Hirth Decl."), attached to Opposer's motion, containing the website pages upon which Opposer relies.

Also on August 1, 2005, as part of the business arrangement with MSPB, Applicant exclusively licensed its mark to MSPB. *See*, Supplemental Response to Interrogatory No. 3 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant, attached as Exhibit D to Vanden Bosch Decl. MSPB markets its diagnostic imaging services with Applicant's mark via the internet and brochures. *See*, Supplemental Response to Interrogatory No. 5 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant attached as part of Exhibit D; Applicant respectfully refers the Board to Exhibits K, L and M of the Hirth Decl. for copies of internet web pages and brochures.

On October 7, 2005, Applicant filed with the U.S. Patent and Trademark Office an application for registration of its mark, serial number 78728786, under International Trademark Class 044, "(Medical, beauty & agricultural), Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services."

International Trademark Class 44 is a services classification. Vanden Bosch Decl. at ¶8 and Exhibit E thereto.

Applicant's mark looks like this in black and white:



Id.; Applicant's application and corresponding drawing dated October 7, 2005, are of record in this matter pursuant to TMBP at §428.05(a); 37 C.F.R. §2.122(b).

Opposer asserts ownership of U.S. Registration No. 2628871 for the word mark DA VINCI¹. Vanden Bosch Decl. at ¶9 and Exhibit F attached thereto. However, Opposer uses the form of "da Vinci" in promoting its mark. Applicant respectfully refers the Board to Opposer's promotional materials attached as Exhibit N to the Hirth Decl.

¹ Opposer started using, and applied for registration of, its mark, DA VINCI S HD SURGICAL SYSTEM, after Applicant applied for registration of its mark. *See*, Response to Interrogatory No. 6 of Opposer's Response to Applicant's First Set of Interrogatories, attached as part of Exhibit B to Vanden Bosch Decl. Like Opposer at page 11, n. 4, of its motion, Applicant bases its opposition to Opposer's motion on its rights against both DA VINCI and DA VINCI S HD SURGICAL SYSTEM. However, solely for purposes of simplicity, Opposer limits its discussion herein to Opposer registered mark, DA VINCI.

Opposer sells computerized surgical goods and other surgical goods under its mark. *See*, Response to Interrogatory No. 3 of Opposer's Response to Applicant's First Set of Interrogatories, attached as Exhibit B to Vanden Bosch Decl. The International Trademark Class for Opposer's mark is 010, "(Medical Apparatus), Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials." TMEP §1401.02(a). Trademark Class 10 is a goods classification. *Id.* Opposer provides no services under its mark, having divided its registration on September 18, 2001, between the goods mark at issue here and the services portion of it. Vanden Bosch Decl. at ¶10 and Exhibit G attached thereto.

Opposer readily concedes at page 15 of its motion that the parties' marks are different in appearance. Opposer's registration is a word mark. Applicant's mark is a highly stylized, graphically designed, and artistically distinct creation for the words "DAVINCI DIAGNOSTIC IMAGING." Applicant's Response to Office Action, dated October 11, 2006 describes the mark in the Description of the Mark and Color(s) Claimed fields:

"The mark consists of a white Vatravian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimposed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "iMAGING" is brown, the dot over the letter "i" is yellow."

"The color(s) white, brown and yellow is/are claimed as a feature of the mark."

See, Vanden Bosch Decl. at ¶8 and Exhibit E thereto.

Opposer's word mark is spelled differently than Applicant's stylized mark. Opposer's mark has two words, "da" and "Vinci." Applicant's mark has three words, "DaVinci", "Diagnostic", and "Imaging."

Opposer splits "da Vinci" into two words. Applicant keeps "DaVinci" together. Further, Opposer only capitalizes the "d" in its word mark "da Vinci" when it appears as the first word in

a sentence. *See*, Exhibit N to the Hirth Decl. Applicant's mark, whether stylized or not, has a capital "D" in "DaVinci."

Opposer also concedes at page 15 of its motion that the parties' two marks sound different with the addition of the words "diagnostic imaging" after DaVinci and the extra seven syllables.

The parties have concurrently used their respective marks since August 2005. *See*, Response No. 5 to Applicant's Response to Opposer's First Request for Admissions to Applicant, attached as Exhibit C to Vanden Bosch Decl.; Response No. 6 to Opposer's Response to Applicant's First Set of Interrogatories to Opposer, attached as Exhibit B to Vanden Bosch Decl.; Response No. 6 to Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant, attached as Exhibit D to Vanden Bosch Decl. During this time, Applicant has performed diagnostic imaging services under its DAVINCI DIAGNOSTIC IMAGING & design mark, and Opposer has sold surgical goods under its "da Vinci" mark, without confusion. *See*, Response to Interrogatories Nos. 17 & 18 of Applicant's Response to Opposer's First Set of Interrogatories to Applicant attached as Exhibit A to Vanden Bosch Decl.; Response to Request Nos. 14 -19 of Applicant's Response to Opposer's First Set of Requests for Production of Documents and Things to Applicant attached as Exhibit A to Vanden Bosch Decl.; Response to Interrogatories Nos. 17 & 18 of Opposer's Response to Applicant's First Set of Interrogatories to Opposer attached as Exhibit B to Vanden Bosch Decl.; Response to Request Nos. 14 -19 of Opposer's Response to Applicant's First Set of Requests for Production of Documents and Things to Opposer attached as Exhibit B to Vanden Bosch Decl.

Opposer has presented no evidence of actual confusion nor could there possibly be any such confusion. Opposer has presented no evidence that it even deals in Applicant's market of Palm Beach County, Florida.

MSPB is likely to continue the following trade channels with its exclusive license to Applicant's mark: The internet, brochures and the individual members of Applicant visiting and presenting at doctors' offices. Response Nos. 5, 11, and 13 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant, attached as Exhibit D to Vanden Bosch Decl.; Boyle Decl. at ¶10. It is improbable that any of Applicant's members will run into one of Opposer's sales force at another doctor's office. *Id.* Unlike Opposer, MSPB is unlikely to advertise with Applicant's mark in journals or publications that target physicians, health care professionals, and the administrators of hospitals and surgical centers. *Id.* Unlike Opposer, MSPB is unlikely to engage in direct sales calls with Applicant's mark about its diagnostic imaging services to physicians, surgeons and administrators of hospitals and surgical centers. *Id.* Unlike Opposer, MSPB is unlikely to conduct workshops using Applicant's mark for and training or other education of surgeons and physicians about radiology. *Id.* Unlike Opposer, MSPB is unlikely to present with Applicant's mark at meetings of medical associations and societies, or distribute promotional materials using Applicant's mark other than on the websites and through brochures. *Id.*

There are 115 live records for marks containing the words "DA VINCI." Vanden Bosch Decl. at ¶11 and Exhibit H thereto. Of those 115 records, 67 identified issued registrations. *Id.* There are 38 live records for marks containing the word "DAVINCI", including Applicant's mark, DAVINCI DIAGNOSTIC IMAGING & Design. Vanden Bosch Decl. at ¶12 and Exhibit I thereto. Of those 38 records, 27 identified issued registrations. *Id.*

There are a number of marks using the term “DAVINCI” or “DA VINCI” for similar goods and services as Opposer and Applicant. Vanden Bosch Decl. at ¶13 and Exhibit J thereto. These include digital video equipment (Serial No. 78565344), medical education services (Serial No. 78710291)², cosmetic dentistry goods, semiconductor and microelectronic goods (Registration No. 2941295), photometric analyzer for clinical use (Registration No. 2870790)³, sheeting industry goods (Registration No. 2547768), dental laboratory services (Registration No. 2061195), graphical user interface software (Registration No. 3276496), medical education and information website (Registration No. 3081814), semiconductor integrated circuit microchips (Serial No. 76656731), computer services and electronic business transaction services (Registration No. 2593734), web-based business transaction software (Registration No. 2678705), personal digital assistant devices and goods (Registration No. 2365226), and prolonged release ascorbates (Registration No. 1200808). *Id.*

III. ARGUMENT

Likelihood of confusion under the Lanham Act, 15 U.S.C. §1052(d), is a legal determination based upon factual underpinnings. *On-Line Careline, Inc. v. Am. Online, Inc.*, 220 F.3d 1080, 1084 (Fed. Cir. 2000). Determination of this legal issue is made on a case-specific basis, applying the thirteen factors set forth in *In re E.I. DuPont deNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973), without deference. *In re Int’l Flavors & Fragrances, Inc.*, 183 F.3d 1361, 1365 (Fed. Cir. 1999). On a motion for summary judgment, the Board must construe all factual disputes, including the *Dupont* factors, in the light most favorable to the non-movant. Federal Rule of Civil Procedure 56. In testing for likelihood of confusion under Sec. 2(d), the following, when of record, must be considered:

² Opposer filed a notice of opposition against the applicant in Opposition No. 91182514.

³ Opposer filed a notice of opposition against the applicant in Opposition No. 91158726.

1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
2. The similarity or dissimilarity of and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
5. The fame of the prior mark (sales, advertising, length of use).
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
10. The market interface between applicant and the owner of a prior mark...
11. The extent to which applicant has a right to exclude others from use of its mark on its goods.
12. The extent of potential confusion, i.e., whether *de minimis* or substantial.
13. Any other established fact probative of the effect of use.

In re E.I. DuPont de Nemours & Co., 476 F.2d at 1361.

A. Under the First *Dupont* Factor, At a Minimum, There Are Material Issues of Fact Whether the Parties' Marks Are Similar or Dissimilar In Their Entireties.

The "similarity or dissimilarity of the marks in their entireties" is a predominant inquiry.

Hewlett Packard Co. v. Packard Press, Inc., 281 F.3d 1261, 1266 (Fed. Cir. 2002), citing, *In re*

E.I. DuPont deNemours, 476 F.2d at 1361. This inquiry examines the relevant features of the marks, including appearance, sound, connotation, and commercial impression. *Hewlett Packard Co. v. Packard Press, Inc.*, 281 F.3d at 1266. For rational reasons, the comparison may give more or less weight to a particular feature of the marks. *Id.*

1. Appearance and Sound

Here, Opposer concedes at page 15 of its motion in support of summary judgment that “[i]n their entireties, DA VINCI and DAVINCI DIAGNOSTIC IMAGING & design differ in appearance and sound.” (Emphasis added).⁴

2. Connotation

Applicant’s designed mark connotes a high level of sophistication and intelligence, and is memorable for its dissonance in the context of a medical imaging center. *See*, Response to Interrogatory No. 2 of Applicant’s Response to Opposer’s First Set of Interrogatories attached as Exhibit A to Vanden Bosch Decl. Opposer’s motion fails to address the similarity or dissimilarity of the connotations of the parties’ respective marks, leaving an issue of fact to be decided at trial.

3. Commercial Impression

Applicant’s mark is completely different in commercial impression from Opposers’s mark. Applicant’s stylized mark and its literal meaning convey a commercial impression of physicians, radiologists, x-rays, CAT scans, PET scans, ultrasound, MRI, and other diagnostic imaging services. The intended commercial impression of Applicant’s mark is “a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting.” *Id.* Opposer

⁴ Opposer’s admission is fatal to its argument at section III.E. of its motion at page 22 that Applicant knowingly adopted a mark similar to Opposer’s.

provides no evidence in its motion for summary judgment of the commercial impression of its mark "da Vinci."

Instead, Opposer argues (insofar as the *Dupont* inquiry of "similarity or dissimilarity of the marks in their entireties" goes), (i) the commercial impression of the two marks is the same as a matter of law, and, moreover, (ii) the commercial impression factor of the inquiry is so overwhelming in its weight, that the Board should find, as a matter of law, the marks similar in their entireties. Opposer misguidedly relies on three cases, none of which are an appeal from summary judgment, to support its position.

The first is *Hewlett Packard, supra*. There, on appeal from a trial decision, the Federal Circuit found that the appearance and sound of the two marks, HEWLETT PACKARD and PACKARD TECHNOLOGIES, were different. However, for rational reasons, the court found that the commercial impressions of the two marks were the same and overwhelmed the dissimilar features of the marks so much that the marks were the same in their entireties. The court weighed commercial impression heavily over the other features of the marks for a rational reason: It noted the well known position that the mark "Hewlett Packard" has in the "technology" field and the potential confusion caused by a mark comprised of one of Hewlett Packard's names, PACKARD, and the word, TECHNOLOGIES, the field in which Hewlett Packard is so distinctive. *Id.*

Opposer also relies on *In re Association of the United States Army*, 85 U.S.P.Q.2d 1264 (TTAB 2007), an appeal from the examining attorney's final decision. Using the same type of reasoning as *Hewlett Packard*, the Board ruled that the applicant's mark, ASSOCIATION OF THE UNITED STATES ARMY, gave the same commercial impression as the opposer's marks, U.S. ARMY and U.S. ARMY RESERVE, to such an extent that it outweighed any dissimilarities

between the appearances, designs, and sounds of the parties' marks. The Board determined that the UNITED STATES ARMY portion of applicant's mark was the dominant feature, not ASSOCIATION OF, nor the Design, because the term U.S. ARMY is such a well-recognized designation due to its obvious national prominence as the name of one of the branches of the U.S. military.

Opposer also cites *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369 (Fed. Cir. 2005). In that case, the court affirmed the *trial decision* of the board to refuse registration of applicant's mark VEUVE ROYALE for sparkling wine on the ground of likelihood of confusion with opposer's marks, VEUVE CLICQUOT PONSARDIN & Design and VEUVE CLICQUOT, also used in association with champagne or sparkling wine. The court reasoned, in part, that since VEUVE CLICQUOT was the second leading brand of champagne sold in the U.S., and since applicant's president admitted that opposer's mark VEUVE CLICQUOT was famous, applicant's mark VEUVE ROYALE made a confusingly similar commercial impression.

The immediate matter is readily distinguishable. First, Opposer cites no case of an appeal from summary judgment. Second, it is impossible to equate the involvement of "da Vinci" in surgical goods with HEWLETT PACKARD'S involvement in technology-based goods. It is likewise impossible to equate the prominence of "da Vinci" in surgical goods with the national prominence of the U.S. ARMY as a branch of the U.S. military. Finally, it is impossible to equate the prominence of "da Vinci" in surgical goods with the national fame of VEUVE CLICQUOT within the market of purchasers of champagne and sparkling wine. This is because, first and foremost, Opposer provides no evidence in its motion of the commercial impression of its mark "da Vinci." Further, Opposer provides no evidence of how the parties' marks are

similar or dissimilar to the extent of commercial impression. Finally, the question of whether “da Vinci” has the commercial impression of HEWLETT PACKARD, U.S. ARMY, OR VEUVE CLIQUOT is a material question of fact for trial. Therefore, since commercial impression is a material question of fact here, there are material issues of fact regarding the similarity or dissimilarity of the parties’ marks in their entireties.

In summary, with respect to the first *Dupont* factor, Opposer concedes the dissimilarity of the parties’ marks to the extent of appearance and sound. Opposer failed to address the similarity or dissimilarity of the connotations of the parties’ marks. Opposer presented no evidence of how the commercial impressions of the parties’ marks differ or are the same. Finally, Applicant presented evidence of how its mark’s design and literal meaning make a commercial impression. Under these circumstances, at a minimum, there are material issues of fact whether the parties’ marks are similar or dissimilar in their entireties as to appearance, sound, connotation and commercial impression.

B. Under the Second *Dupont* Factor, There is a Material Issue of Fact of Whether the Nature of the Goods Offered by Opposer under its Mark are Similar or Dissimilar to the Professional Services Which are Provided under Applicant’s Mark.

Opposer sells computerized surgical goods and other surgical goods under its mark. The International Trademark Class for Opposer’s mark is 010, “(Medical Apparatus), Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.” Trademark Class 10 is a goods classification. Opposer provides no services under its mark, having split its registration on September 18, 2001 between the goods mark at issue here and the services portion of it.

Applicant’s physician radiologists provide diagnostic imaging services, including digital mammography, MRI, PET, PET-CT, and CT under its stylized mark. The International

Trademark Class for Applicant's mark is "Class 44, (Medical, beauty & agricultural), Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services."

Therefore, there are, at a minimum, material issues of fact whether Applicant's radiology services and Opposer's surgical goods are similar or dissimilar under the second *Dupont* factor.

Opposer reliance on *In re Paper Doll Promotions, Inc.*, 84 U.S.P.Q.2d 1660 (TTAB 2007), is misplaced. First, the matter involved an appeal from the examining attorney's final decision to refuse registration, not summary judgment. Second, the applicant applied for the word mark PAPER DOLL PROMOTIONS for "costumes" which the Board ruled as International Trademark 25, a goods classification. The Board ruled that the prior registration for word mark PAPER DOLL, used to sell women and children's apparel under goods, also under International Trademark Class 25, precluded applicant's registration.

Here, unlike *Paper Doll*, there are not similar goods, sold under similar word marks, with identical trademark classes.

Further, in *Paper Doll*, the Board also ruled that there was not a likelihood for confusion between the applicant's mark and another prior registration, PAPER DOLL A WOMAN BY ANY DEFINITION and Design. Despite the fact that both marks were classified under International Trademark Class 25 and the prior registration was for goods consisting of "clothing, namely t-shirts and underwear," the Board determined that the prior registration's design was the dominant feature, not the name, and there was no likelihood of confusion.

Here, the facts are more compelling. Applicant has a service mark. Opposer has a goods mark. Applicant has a distinguishing and dominant design as part of its mark. Opposer has a word mark. Applicant's design, like the prior registration in *Paper Doll*, dominates to such a

degree that there is no likelihood of confusion about the shared word, DAVINCI, especially given the disparity between Applicant's services and Opposer's goods.

Opposer also mistakenly relies upon *Eikonix Corp. v. C.G.R. Medical Corp.*, 209 U.S.P.Q. 607 (TTAB 1981) to argue that the parties' goods and services are similar in nature as a matter of law, leading to a likelihood of confusion as a matter of law. *Eikonix* was a trial decision on the cancellation of a registration. *Eikonix Corp. v. C.G.R. Medical Corp.*, 209 U.S.P.Q. at 608. The parties' marks sounded exactly the same, and the Board determined at trial, applying the first *Dupont* factor, that the parties' mark were similar in their entirety:

The marks "ICONEX" and "EIKONIX" are different in spelling; but they are phonetical equivalents generating identical pronunciations and commercial impressions. Considering the fallibility of the memory of purchasers as to trademarks including those persons considered to be sophisticated and technically oriented, the similarities between the marks "ICONEX" and "EIKONIX" so far outweigh the differences between them that it is not unreasonable to assume that one mark would and could be equated with the other... Thus, no distinction for purposes herein can be drawn between the marks "ICONEX" and "EIKONIX", and *the issue of likelihood of confusion joined by the parties must necessarily turn on whether the goods of the parties are such that, because of the identity of the marks, there is a likelihood of confusion or mistake as to their sources.* (Citations omitted and emphasis added).

Id at 613.

After an extensive review of the parties' businesses, the Board described petitioner's business and goods as follows:

Petitioner's activities, over the years since its inception, have been in connection with research, development, engineering, product development, and sales of equipment in the fields of photo-optics and electro-optics related to taking, processing, analyzing, and transmitting images, including equipment utilizing video display systems. *For most of its corporate existence, petitioner has been basically in the business of designing and constructing costly and highly technical and specialized photo-optical and electro-optical equipment and systems ...*

Id at 614. (Emphasis added). The Board described respondent's goods as "a medical x-ray television camera and control unit," and more particularly "a precision, solid state,

closed-circuit camera specifically designed for viewing the output an x-ray image intensifier” which “when integrated with certain imaging systems...meets the fluoroscopic visualization requirements for general and special radiological procedures.” *Id* at 613.

The Board ruled that since the parties’ marks were similar in their entirety, the petitioner, as the prior user, possessed “rights in the mark “EIKONIX” sufficient to preclude registration by a subsequent user of the same or a similar mark not only for like or similar goods, but for any goods which might reasonably be assumed to emanate from it in the normal expansion of its business under the mark.” *Id.* (Emphasis added). Further, the Board ruled that for the petitioner to prevail, “there must be some relationship between the goods...so that individuals encountering these goods under the marks in issue will mistakenly assume that the senior or prior user has “bridged the gap” and is the source for these different goods.” *Id.*

The Board ruled in favor of the petitioner, holding that respondent’s mark was used for goods which might reasonably be assumed to emanate from petitioner in the normal expansion of petitioner’s business under its mark, and therefore respondent’s registration had to be cancelled:

[T]here is undoubtedly a relationship, if not a close association, between the technique and equipment utilized by petitioner in studying and evaluating photographic images and the equipment necessary to perform the same functions in relationship to images obtained with x-ray equipment. It would thus be a natural expansion of petitioner's activities in designing and manufacturing equipment for recording, analyzing, and measuring images to move into the field of x-ray imagery. The ease with which this can be or even has been accomplished by petitioner is demonstrated by the fact that petitioner has produced and sold light tables for viewing photographictype imagery and that light tables, although possibly of a different structure, are used in connection with x-ray equipment; and by the disclosure in the record that petitioner currently manufactures and sells an image digitizer for use in x-ray analysis that includes video electronics similar to the video electronics utilized in a television system for putting information on a television-type screen.

Id at 614.

In the immediate matter, unlike *Eikonix*, Opposer admits that Applicant's mark sounds different from Opposer's mark. Moreover, no reasonable consumer would assume that Applicant's professional radiology services emanate from the natural expansion of Opposer's activities in designing and manufacturing surgical goods to move into the field of physician services. Opposer has not "bridged the gap" whereby someone would think that it employs licensed physicians, rents or builds diagnostic imaging centers, rents or buys diagnostic imaging equipment, submits billing to insurance companies and the government for reimbursement, *etc.* Consumers have not confused, and will not confuse, Applicant's physician services with Opposer's surgical goods.

C. Under the Third *Dupont* Factor, There are Material Issues of Fact Whether Applicant and Opposer's likely-to-continue trade channels are similar or dissimilar.

Opposer is likely to continue the following trade channels for its mark: Trade shows, press releases, print advertisements in journals and publications that target physicians, surgeons, health care professionals and the administrators of hospitals and surgical centers, direct sales calls to physicians, surgeons and administrators of hospitals and surgical centers, workshops for and training or other education of surgeons and physicians, presentations and attendance at meetings of medical associations and societies, distribution of promotional materials such as brochures, videos and CDs, and the Internet. See, Page 20 of Opposer's motion for summary judgment.

MSPB is likely to continue the following trade channels with its exclusive license to Applicant's mark: The internet, brochures and the individual members of Applicant visiting and presenting at doctors' offices.

Given the widely disparate trade channels of the parties, the Board cannot properly find, as matter of law, that the parties' likely-to-continue trade channels are similar. Here, there is no support that the parties' trade channels have been or are likely to continue to be similar. Therefore, the third *Dupont* factor does not support a finding of likelihood of confusion. At a minimum, there is a question of fact whether the parties' likely-to-continue trade channels are similar.

D. Under the Fourth *Dupont* Factor, There are Material Issues of Fact Whether the Conditions under Which and Buyers to Whom Sales are Made are Similar or Dissimilar.

Applicant has repeatedly asserted in these proceedings that the consumers of Applicant's diagnostic imaging services are medical patients.

Opposer states that consumers of its surgical goods are medical and health care professionals, including surgeons, physicians, hospital administrators and the administrators of outpatient surgical centers. *See*, Page 22 of Opposer motion for summary judgment. Further, Opposer suggests that Applicant's customers are the physicians who buy Opposer's goods. *See*, Page 9 of Opposer's motion for summary judgment. Opposer's might have argued that the ultimate consumers of Applicant's services are the intermediary payors, the insurance companies and the federal government, and that they are likely to confuse Applicant and Opposer because of their marks. Nevertheless, Opposer simply raises another factual issue of whether Applicant's buyers are patients or the intermediary, referring doctors. Therefore, Opposer's motion merely raises a material factual question of whether the buyers of Opposer's goods and Applicant's services are similar or dissimilar. It is not matter of law as Opposer suggests.

In reality, a physician may prescribe diagnostic imaging tests for their patients and refer patients to radiologists. The conditions under which a surgeon would buy Opposer's goods or

refer a patient for Applicant's services are completely unrelated. The first is a financial decision for the surgeon. The second is a non-financial decision for the surgeon to diagnose his patient's disease. Both decisions are carefully calculated decisions, not impulse decisions likely to result in confusing Opposer's goods with Applicant's services. Finally, the patient ultimately decides to which radiologist group he goes for diagnostic imaging services, not the referring physician. A referring physician typically gives his patient a number of radiology groups to choose from. Even if the physician provides one group name, the decision to go to that radiology group remains the patient, the ultimate purchaser.

www.mspb.md and www.davinci-imaging.com are clearly aimed at the patient and his decision-making, not the referring physician's. Opposer suggests the websites are directed towards physicians. *See*, Pages 9-10 and 22 of Opposer's motion for summary judgment. However, Applicant's website is plainly directed at the patient when it states "you and your physician." It does not read "you and your patient." The lack of technical, medical language is more proof that the websites are directed at the consuming public. Likewise, the language lifted from MSPB's website in Opposer's motion is directed at the patient who is being informed how getting his diagnostic imaging services at DaVinci Diagnostic Imaging will benefit him and his physician.

At a minimum, there is a question of fact of whether the websites are directed towards patients or doctors in determining the larger question of the similarity or dissimilarity between buyers of Opposer's surgical goods and Applicant's diagnostic imaging services. Summary judgment must therefore be denied.

E. Under the Fifth *Dupont* Factor, There is No Material Issue of Fact that Opposer's Prior Mark has Fame.

Neither Opposer nor Applicant present evidence of fame of Opposer's prior mark.

Therefore, Applicant's use of its stylized mark DAVINCI DIAGNOSTIC IMAGING will not cause confusion among consumers of Opposer's surgical goods and Applicant's diagnostic imaging services.

F. Under the *Sixth* Dupont Factor, the Number and Nature of Similar Marks In Use on Similar Goods and Services Comprised of or Including the Word DAVINCI or DAVINCI creates a Material Issue of Fact of Whether There is a Likelihood of Confusion Between the Parties' Marks.

In a crowded field of similar marks the rights associated with one of the marks in that field are weak and thus narrowly construed. *See, McCarthy on Trademarks*, § 11.87 and § 11.88; *Tektronix, Inc. v. Daktronics, Inc.* 534 F. 2d 915, 189 U.S.P.Q. 693(C.C.P.A. 1976); *General Mills, Inc. v. Kellogg Co.*, 824 F. 2d 622, 3 U.S.P.Q. 2d 1442 (8th Cir. 1987) (Evidence of third party usage of similar marks on similar goods is admissible and relevant to show that the mark is relatively weak and entitled to a narrow scope of protection.). Further, third party registrations are probative to determine a common, weak significance of a part of a composite mark. *See, McCarthy on Trademarks*, § 11.90, and footnotes 2 and 3 and citations therein, and *Sams*, "Third Party Registrations in T.T.A.B. Proceedings," *Trademark Rep.* 197 (1982).

In the immediate matter, there are 115 live records for marks containing the words "DA VINCI." Of those 115 records, 67 identified issued registrations. There are 38 live records for marks containing the word "DAVINCI", including Applicant's mark, DaVinci Diagnostic Imaging & design. Of those 38 records, 27 identified issued registrations. Moreover, several of the marks are used for goods and services similar to the parties here.

The evidence of third party use of marks comprised of or including DAVINCI or DAVINCI, attached to the Vanden Bosch Decl. as Exhibits H, I and J, is therefore highly probative and speaks directly to the factual issue of whether Opposer's word mark and Applicant's highly

stylized mark could be confused in a world full of DA VINICI AND DAVINCI marks. At a minimum, viewing the evidence in a light most favorable to Applicant, there is a material issue of fact, precluding summary judgment, of whether or not there is a likelihood of confusion between the parties' marks, given that they are surrounded by numerous "DA VINCI" and "DAVINCI" marks.

G. Under the Seventh, Eighth, and Twelfth *Dupont* Factors, Actual Instances of, and Potential for, Confusion are Non-Existent.

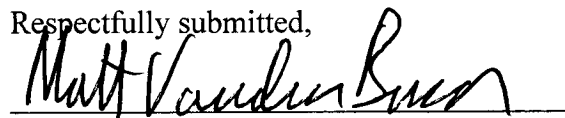
Applicant and Opposer have concurrently used their respective marks since August 2005. During that time, Applicant has performed diagnostic imaging services under its DAVINCI DIAGNOSTIC IMAGING & design mark, and Opposer has sold surgical goods under its "da Vinci" mark, without confusion. Opposer has presented no evidence of actual confusion nor could there possibly be any such confusion. Opposer has presented no evidence that it even conducts business in Palm Beach County, Florida. These *Dupont* factors of concurrent use without actual confusion and the lack of potential for confusion are compelling factual evidence precluding an award of summary judgment in Opposer's favor.

IV. CONCLUSION

For the foregoing reasons, Applicant DaVinci Radiology Associates, P.L. respectfully demands that this Board deny Opposer Intuitive Surgical, Inc.'s motion for summary judgment and allow this matter to proceed to trial.

Dated: May 8, 2008

Respectfully submitted,



Matthew T. Vanden Bosch
Attorney for Applicant
DaVinci Radiology Associates, P.L.
301 Clematis Avenue, Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

DECLARATION OF THOMAS P. BOYLE, M.D. IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT

I, Thomas P. Boyle, M.D., declare:

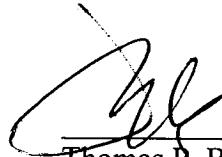
1. I am a member of DaVinci Radiology Associates, P.L. ("Applicant"), authorized by Applicant's membership to act on its behalf in this Opposition Proceeding.
2. The undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or documents or any registration resulting therefrom, declares that all statements made of his own knowledge are true and all statements on information and belief are believed to be true.
3. If called as a witness, I could and would competently testify to the following:
4. Applicant is a four-member group of radiologists, organized as a professional limited liability company under the laws of the State of Florida.

5. From 2003-2005, Medical Management of the Palm Beach, LLC, a Florida limited liability company ("MMPB"), consisting at that time of the same members as Applicant, constructed a building (the "Building") for Applicant's diagnostic imaging business.
6. Instead of owning and operating the diagnostic imaging business itself, on August 1, 2005, MMPB leased the Building and subleased the diagnostic imaging equipment to Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB").
7. Also on August 1, 2005, Applicant contracted with MSPB to be its exclusive independent contractor for purposes of performing MSPB's diagnostic imaging services at the Building and its existing imaging center location at 5401 S. Congress, Atlantis, Florida 33462 ("5401").
8. Upon information and belief, the website, www.mspb.md, to the extent it is devoted to diagnostic imaging services, is directed towards patients, not doctors. The website, www.davinci-imaging.com is directed at patients, not doctors.
9. Applicant exclusively licensed its mark to MSPB pursuant to the terms of that certain Exclusive License Agreement between Applicant and MSPB, dated August 1, 2005.
10. Upon information and belief, MSPB is likely to continue to use the internet and brochures as trade channels for diagnostic imaging services with Applicant's mark. Members of Applicant are likely to visit and present at doctors' offices with Applicant's mark. Upon information and belief, it is improbable that Applicant's members will run into one of Opposer's sales force at another doctor's office. Upon information and belief, MSPB is unlikely to advertise diagnostic imaging services with Applicant's mark in journals or publications that target physicians, health care professionals, and the administrators of hospitals and surgical centers. Upon information and belief, MSPB is unlikely to engage in direct sales calls for diagnostic imaging services using Applicant's mark to physicians, surgeons and administrators

of hospitals and surgical centers. Upon information and belief, MSPB is unlikely to conduct, using Applicant's mark, workshops for and training or other education of surgeons and physicians about the field of radiology. Upon information and belief, MSPB is unlikely to present at meetings of medical associations and societies regarding diagnostic imaging services using Applicant's mark, or distribute promotional materials other than brochures and on the websites, www.mspb.md and www.davinci-imaging.com.

I declare under penalty of perjury under the laws of the State of Florida and the United States of America that the foregoing is true and correct.

Executed this 7th day of May 2008, at Atlantis, Florida.

A handwritten signature in black ink, appearing to read 'T. Boyle', is written over a horizontal line.

Thomas P. Boyle, M.D.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

DECLARATION OF MATTHEW T. VANDEN BOSCH IN SUPPORT OF
APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT

I, Matthew T. Vanden Bosch, declare:

1. I am the attorney responsible for representing DaVinci Radiology Associates, P.L. ("Applicant") in this Opposition Proceeding.
2. The undersigned, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or documents or any registration resulting therefrom, declares that all statements made of his own knowledge are true and all statements on information and belief are believed to be true.
3. If called as a witness, I could and would competently testify to the following:

4. True and correct copies of Applicant's Response to Opposer's First Set of Interrogatories to Applicant and Applicant's Response to Opposer's First Set of Requests for Production of Documents and Things to Applicant are collectively attached hereto as Composite Exhibit A.
5. True and correct copies of Opposer's Responses to Applicant's First Set of Interrogatories to Opposer and Opposer's Responses to Applicant's First Set of Requests for Production of Documents and Things are collectively attached hereto as Composite Exhibit B.
6. True and correct copies of Applicant's Response to Opposer's First Request for Admissions to Applicant and Applicant's Response to Opposer's Second Set of Interrogatories are collectively attached hereto as Composite Exhibit C.
7. True and correct copies of Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to Applicant are attached hereto as Composite Exhibit D.
8. True and correct copies of Applicant's application for registration of DAVINCI DIAGNOSTIC IMAGING & Design, U.S. Trademark Application Serial No. 78/738,,786, the Office Action issued April 12, 2006 and responses thereto filed on October 11, 2006, and the Notice of Publication of the mark DAVINCI DIAGNOSTIC IMAGING & Design, all obtained from the U.S. Patent & Trademark Office's Trademark Document Retrieval ("TDR") system, are collectively attached hereto as Exhibit E.
9. Upon information and belief, Exhibit H of Michelle J. Hirth's Declaration, attached hereto as Exhibit F, is a true and correct copy of a certified copy, showing the current status and current title of U.S. Trademark Registration No. 2,628,871, prepared on March 5, 2008, by the U.S. Patent and Trademark Office.
10. On April 30, 2008, I accessed the U.S. Patent & Trademark Office's website, <http://www.uspto.gov/>. I clicked on trademarks in left hand column, which expanded the list. I

then clicked on "6 View Full Files (TDR)". I entered into the Serial No. search bar on the resulting page Opposer's serial number 75982190 and clicked "search." This brought up Opposer's file, and I clicked start download for "18-Sep-2001, Paper Correspondence Incoming." The I clicked to open the .pdf and printed out the resulting .pdf, attached as Exhibit G.

11. On April 26, 2008, I searched the Trademark Electronic Search System ("TESS"), using the "New User Form Search (Basic)." I clicked "Plural and Singular" and "Live." I entered in the search bar on webpage "da vinci" in parentheses. I selected "Combined Word Mark" and "All Search Terms (And)." My search obtained 115 live records for marks containing the words "da vinci." Of those 115 records, 67 identified issued registrations. The results page translated the search as follows: "Current Search: S3:(live)[LD]AND("da vinci")[COMB] docs: 115 occ: 373". I printed the Records List Display, attached hereto as Exhibit H.

12. On April 26, 2008, I searched TESS, using the "New User Form Search (Basic)." I clicked "Plural and Singular" and "Live." I entered in the search bar on webpage "davinci" without parentheses. I selected "Combined Word Mark" and "All Search Terms (And)." My search obtained 37 live records for marks containing the word "davinci." Of those 38 records, 27 identified issued registrations. The results page translated the search as follows: "Current Search: S3:(live)[LD]AND(davinci)[COMB] docs: 38 occ: 120". I printed the Records List Display, attached hereto as Exhibit I.

13. On April 26, 2008, from the Record List Displays, referred to in ¶12 and ¶13 hereof, I clicked and printed out the resulting records attached hereto as Exhibit J. A summary spreadsheet is also attached as part of Exhibit J, pursuant to Federal Rule of Evidence 1006, summarizing the printed, resulting records.

I declare under penalty of perjury under the laws of the State of Florida and the United States of America that the foregoing is true and correct.

Executed this 8th day of May 2008, at Ocean Ridge, Florida.

A handwritten signature in black ink, reading "Matt Vanden Bosch". The signature is written in a cursive, flowing style. The first name "Matt" is written with a large, prominent "M". The last name "Vanden Bosch" is written in a more compact, cursive script. The signature is positioned above a horizontal line.

Matthew T. Vanden Bosch

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

NOW COMES, Applicant, Davinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's First Set of Interrogatories to Applicant, responds as follows:

INTERROGATORY NO. 1:

Identify the person or persons most familiar with the conception and adoption of Applicant's Mark.

Howard G. Butler, M.D., 9987 Equus Circle, Boynton Beach, FL 33437: Former member and manager of DRA.

Thomas P. Boyle, M.D., 17690 Lomond Court, Boca Raton, FL 33496: Present member of DRA.

Kirk Friedland, 505 South Flagler, West Palm Beach, FL 33401: Former legal counsel to DRA.

INTERROGATORY NO. 2:

Describe the circumstances underlying the conception and adoption of Applicant's Mark by identifying the timing of the conception and adoption, the persons involved in the conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Applicant's Mark.

In 2002 Dr. Boyle developed the concept of a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting. It was decided, by Dr. Boyle and Dr. Butler, that the name of the imaging center had to be memorable, unlike other imaging centers that had names associated with medical institutions or geographic locations.

It was decided that we would search for a name that had public recognition, connoted a high level of sophistication and intelligence, and would be memorable for its dissonance in the context of a medical imaging center. We developed several options including The Tesla Imaging Center, The Newton Center for Imaging, and the DaVinci Center. We settled on either DaVinci or Tesla. In late 2002, Dr. Butler read about the forthcoming blockbuster novel, *The DaVinci Code* and we decided that the DaVinci name would become more well-known because of the publicity associated with the book. Because this might help our public promotion, we chose DaVinci.

INTERROGATORY NO. 3:

Identify and describe all goods and services on which you use, have used or intend to use Applicant's Mark.

By means of that certain Exclusive License Agreement, by and between Applicant and Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB"), dated August 1, 2005 (the "Agreement"), Applicant licensed MSPB to use exclusively Applicant's Mark in connection with MSPB's diagnostic imaging services. A copy of the Agreement is

attached hereto. MSPB consists of consisting of 50+ physicians licensed to practice medicine in the State of Florida. MSPB conducts its diagnostic imaging services only within Palm Beach County, Florida.

INTERROGATORY NO. 4:

State the intended or potential uses for Applicant's goods and/or services offered under or in connection with Applicant's Mark.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

INTERROGATORY NO. 5:

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant further avers that it has no particular knowledge of how MSPB markets or will market its diagnostic imaging services.

INTERROGATORY NO. 6:

State the date(s) upon which you began to use Applicant's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

INTERROGATORY NO. 7:

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Applicant's Mark by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.

None.

INTERROGATORY NO. 8:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

On November 12, 2003, Kirk Friedland, attorney at law, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci."

INTERROGATORY NO. 9:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

None.

INTERROGATORY NO. 10:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

None.

INTERROGATORY NO. 11:

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant further avers that it has no particular knowledge of how MSPB promotes its diagnostic imaging services.

INTERROGATORY NO. 12:

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Medical Specialists of the Palm Beaches, 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463, phone: 561-649-7000, fax: 561-964-4603, website:

<http://mspb.md/default.html>.

INTERROGATORY NO. 13:

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant further avers that it has no particular knowledge of the channels of trade through which MSPB's diagnostic imaging services move to reach end-users of said diagnostic imaging services.

INTERROGATORY NO. 14:

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

Medical Specialists of the Palm Beaches, 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463, phone: 561-649-7000, fax: 561-964-4603, website:

<http://mspb.md/default.html>.

INTERROGATORY NO. 15:

Describe the circumstances under which Applicant first became aware of Opposer's Marks, including but not limited to stating the date(s) upon which Applicant first became aware of Opposer's Marks, identifying the person or persons at Applicant who first became aware of Opposer's Marks, and stating the manner in which Applicant first became aware of Opposer's Marks.

On November 12, 2003, Kirk Friedland, attorney at law, and former counsel to Applicant, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci" and found Opposer's Marks.

INTERROGATORY NO. 16:

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Applicant further avers that, to the best of its knowledge and belief, MSPB's consumers are medical patients.

INTERROGATORY NO. 17:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Opposer, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g.,

member of the consuming public, member of the trade), and your response to the communication.

None.

INTERROGATORY NO. 18:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

None.

INTERROGATORY NO. 19:

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify *and* the grounds for each such opinion.

None.

INTERROGATORY NO. 20:

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

None.

INTERROGATORY NO. 21:

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

None.

INTERROGATORY NO. 22:

If you have sought or received opinions, legal or otherwise, regarding your right to use Applicant's Mark, describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

None.

INTERROGATORY NO. 23:

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

Thomas P. Boyle, M.D., 17690 Lomond Court, Boca Raton, FL 33496: Present member of DRA.

INTERROGATORY NO. 24:

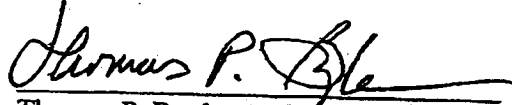
Identify those person(s) who had more than a clerical role in searching for documents responsive to Opposer's First Set of Requests for Production of Documents and Things to Applicant.

Thomas P. Boyle, M.D., 17690 Lomond Court, Boca Raton, FL 33496: Present member of DRA.

Kirk Friedland, 505 South Flagler, West Palm Beach, FL 33401: Former legal counsel to DRA.

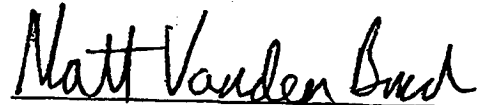
I swear or affirm that the above statements are true to the best of my information and belief.

Dated: September 18, 2007


Thomas P. Boyle, Authorized Member
DaVinci Radiology Associates, P.L.

Respectfully submitted,

Dated: September 20, 2007


Matthew T. Vanden Bosch
Attorney at Law
301 Clematis Avenue
Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S ANSWER TO
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served on
Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Embarcadero Four, 17th Floor
San Francisco, California 94111
Attorneys for Opposer

This ²⁰~~18~~th day of September, 2007.


Matthew T. Vanden Bosch

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

Opposition No. 91175319

Serial No. 78/728,786

v

Published: December 19, 2006

DAVINCI RADIOLOGY
ASSOCIATES, P.L.,

Applicant.

APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO APPLICANT

Applicant, DaVinci Radiology Associates, P.L., through undersigned counsel and pursuant to Federal Rule of Civil Procedure 34 and Trademark Rule of Practice 2.120, hereby serves its responses to Opposer, Intuitive Surgical, Inc., numbered 1 – 29 (“Request” or “Requests”).

GENERAL OBJECTIONS

1. Applicant objects to any Request that requires Applicant to produce documents that are not within its possession, custody or control. No responses to the Requests will be made on behalf of persons other than Applicant or those in its control. For the purpose of these responses, Howard Butler, M.D. and Medical Specialists of the Palm Beaches, Inc. are outside Applicant's control.

2. Applicant objects to the Requests to the extent they are inconsistent with Applicant's obligations under the Federal Rules of Civil Procedure and Trademark Rules of Practice. Further, Applicant will respond based on its good faith, reasonably diligent

efforts to identify and obtain responsive documents, but it may not be reasonably practicable or even possible to identify and obtain "all" documents or "each" document that may exist.

3. Applicant objects to the production of any document that Applicant is precluded from disclosing by law, contract, agreement, rule, regulation or administrative order including but not limited to documents containing non-public personal financial information.

4. Applicant objects to the production of any document that is protected by any privilege or doctrine including, without limitation, the attorney-client privilege, the work product doctrine, trade secret privilege, or any other applicable privilege or non-disclosure doctrine. Applicant will produce a privilege log upon resolution of its objections to the scope of the document requests, as stated below.

5. Applicant objects to any attempt by the Opposer to dictate by "definition," "instruction," or otherwise what Applicant's obligations are to respond to discovery. Applicant will resolve such questions, if any arise, by adhering to its obligations under the Federal Rules of Civil Procedure and Trademark Rules of Practice.

SPECIFIC RESPONSES

REQUEST NO. 1:

All documents that refer or relate to the conception of Applicant's Mark.

Applicant will produce responsive documents from its records showing the conception of Applicant's Mark.

REQUEST NO. 2:

All documents that refer or relate to your selection process for Applicant's Mark.

Applicant will produce responsive documents from its records showing the selection process for Applicant's Mark.

REQUEST NO. 3:

All documents that refer or relate to your decision to adopt Applicant's Mark.

Applicant will produce responsive documents from its records relating to the decision to adopt Applicant's Mark.

REQUEST NO. 4:

All documents that refer or relate to your decision to file with the United States Patent and Trademark Office an application to register Applicant's Mark.

Applicant will produce responsive documents from its records relating to the decision to file with the United States Patent and Trademark Office an application to register Applicant's Mark. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Applicant's Mark.

Applicant will produce responsive documents from its records relating to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Applicant's Mark. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding protectability of Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 8:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 8:

A sample or specimen showing trademark use of the mark for services, if any,

identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Opposer but which were received by you.

Applicant does not have any documents responsive to this request.

REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have

been intended for Opposer but which were received by you.

Applicant does not have any documents responsive to this request.

REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Opposer.

Applicant does not have any documents responsive to this request.

REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Opposer.

Applicant does not have any documents responsive to this request.

REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 19:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 20:

All documents that refer or relate to Opposer's Marks that were generated prior to the commencement of this Opposition Proceeding.

Applicant will produce responsive documents from its records relating to Opposer's Marks that were generated prior to the commencement of this Opposition Proceeding. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Applicant's Mark.

Except for Opposer's objections, Applicant does not have any documents responsive to this request.

REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Applicant's Mark.

Applicant does not have any documents responsive to this request.

REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Applicant's Mark.

Applicant will produce responsive documents from its records relating to licenses that it has given regarding Applicant's Mark.

REQUEST NO. 27:

All documents identified in your responses to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

Applicant will produce responsive documents from its records relating to its responses to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

Applicant will produce responsive documents from its records which it referred to or consulted in responding to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

Applicant will produce responsive documents from its records to this request except where an objection or privilege applies.

Respectfully submitted,

Date: September 20, 2007



Matthew T. Vanden Bosch, Esq.
Attorney for Applicant
301 Clematis Avenue
Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served on Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111

Attorneys for Opposer

This 20th day of September, 2007.



Matthew T. Vanden Bosch

EXHIBIT B

INTUITIVE SURGICAL, INC.,

Opposition No. 91175319

Serial No. 78/728,786

Published: December 19, 2006

Applicant.

Opposer Intuitive Surgical, Inc. ("Opposer") responds and objects to Applicant DaVinci Radiology Associates, P.L.'s ("Applicant") First Set of Interrogatories to Opposer as follows:

1. Opposer has made a reasonable and good faith effort to respond to Applicant's First Set of Interrogatories to Opposer (collectively these "Interrogatories" and singly an "Interrogatory") and has made a reasonable and good faith effort to locate responsive information. Opposer has not yet completed its discovery or preparation of its case in this Opposition Proceeding. These responses, therefore, are based upon information known to Opposer at this time and on documents presently available and specifically known to Opposer after a reasonable, diligent search. These Responses are made in a good faith effort to supply such information as is presently known but should in no way be to the prejudice of Opposer's right to produce subsequently discovered information or documents.

2. Each and every individual Interrogatory is subject to the general objections set forth herein and these general objections form a part of the responses to each and every Interrogatory. These general objections may be specifically interposed for the purpose of clarity in response to a particular Interrogatory but the failure to specifically incorporate any general objection should not be construed as a waiver of the objection.

3. Opposer objects to Applicant's Definitions to the extent that it attempts to impose on Opposer burdens or requirements in addition to those set forth in the Federal Rules of Civil Procedure and/or 37 Code of Federal Regulations ("C.F.R.") Part 2 or attempts to require Opposer to respond in any manner beyond that which is required by the Federal Rules of Civil Procedure and/or 37 C.F.R. Part 2.

4. Opposer objects to each Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

5. Opposer objects to Definitions Paragraph C on the grounds that it is overly broad and unduly burdensome and to the extent that it results in Interrogatories that seek information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

6. Opposer objects to Definitions Paragraph E to the extent that it results in Interrogatories that seek information protected from disclosure by the attorney-client privilege, the work product doctrine and other statutory or common law privileges.

7. Opposer objects to Definitions Paragraph F to the extent that it results in Interrogatories that are overly broad and unduly burdensome and neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible

evidence in that consumers of Opposer's goods offered under Opposer's Marks do not include "patients and those upon whom diagnostic test are performed."

8. Opposer objects to Definitions Paragraph I on the grounds that it is overly broad and unduly burdensome and to the extent it results in Interrogatories that seek information protected from disclosure as confidential personnel information or by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the person or persons most familiar with the conception and adoption of Opposer's Mark (sic).

RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Steve Annon, Senior Director of Marketing at Intuitive Surgical, Inc.

INTERROGATORY NO. 2:

Describe the circumstances underlying the conception and adoption of Opposer's Mark (sic) by identifying the timing of the conception and adoption, the persons involved in the

conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Opposer's Mark (sic).

RESPONSE TO INTERROGATORY NO. 2:

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound.

INTERROGATORY NO. 3:

Identify and describe all goods and services on which you use, have used or intend to use Opposer's Mark (sic).

RESPONSE TO INTERROGATORY NO. 3:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are used on or in association with surgical systems, instruments and associated devices used in robotic-assisted, minimally invasive surgery.

INTERROGATORY NO. 4:

State the intended or potential uses for Opposer's goods and/or services offered under or in connection with Opposer's Mark (sic).

RESPONSE TO INTERROGATORY NO. 4:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEMS (Stylized) are used in minimally invasive, robotic-assisted surgery in a wide variety of surgical applications including but not limited to cardiac, urology, general surgery, thoracic, gynecologic and pediatric surgical procedures. See Opposer's Internet websites www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com.

INTERROGATORY NO. 5:

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

RESPONSE TO INTERROGATORY NO. 5:

Opposer objects to this Interrogatory on the grounds that it is compound as it refers to Opposer's response to Interrogatory No. 3, which is itself compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM

(Stylized) are offered to hospitals, surgical centers and physicians primarily through a direct sales force in the United States. Goods are promoted under these marks via trade shows, press releases, workshops for and training and other education of practitioners offered and presented by Opposer, attendance and presentations at meetings of medical associations and societies, including but not limited to the American Urological Association, the World Congress of Endourology, the American Heart Association, the American Association of Gynecological Laparoscopists, the International Gynecologic Oncology Robotics Symposia, the Minimally Invasive Robotics Association, and the Society of Thoracic Surgeons, and via Internet-based advertising including Opposer's Internet websites, www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com.

INTERROGATORY NO. 6:

State the date(s) upon which you began to use Opposer's Mark (sic) on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

RESPONSE TO INTERROGATORY NO. 6:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and seeks information neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's mark DA VINCI was first used on or in connection with Opposer's goods at least as early as July

7, 2000. Opposer's mark DA VINCI S HD SURGICAL SYSTEM (Stylized) was first used on or in connection with Opposer's goods at least as early as January 2006.

INTERROGATORY NO. 7:

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Opposer's Mark (sic) by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.

RESPONSE TO INTERROGATORY NO. 7:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and seeks information neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: (a) *Intuitive Surgical, Inc. v. BioMerieux, B.V.*, Opposition Proceeding No. 91158726 before the U.S. Patent & Trademark Office, Trademark Trial and Appeal Board, Proceeding terminated upon filing of withdrawal of opposition by Intuitive Surgical, Inc.; (b) *Intuitive Surgical, Inc. v. Ziemer Ophthalmic Systems AG, et al.*, U.S. District Court for the Northern District of California Case No. C07-01734 JSW, case dismissed upon filing of Request for Dismissal by Intuitive Surgical, Inc.

INTERROGATORY NO. 8:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

RESPONSE TO INTERROGATORY NO. 8:

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: *See* February 2, 1999 Thomson & Thomson Research Report for DA VINCI produced in response to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

INTERROGATORY NO. 9:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of

the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

RESPONSE TO INTERROGATORY NO. 9:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No such studies, searches or investigations exist.

INTERROGATORY NO. 10:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

RESPONSE TO INTERROGATORY NO. 10:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound

and is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: *See* February 2, 1999 Thomson & Thomson Research Report for DA VINCI produced in response to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

INTERROGATORY NO. 11:

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

RESPONSE TO INTERROGATORY NO. 11:

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: *See* Opposer's response to Interrogatory No. 5 of these Responses to Applicant's First Set of Interrogatories to Opposer.

INTERROGATORY NO. 12:

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

RESPONSE TO INTERROGATORY NO. 12:

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Steve Annon, Senior Director of Marketing at Intuitive Surgical, Inc.

INTERROGATORY NO. 13:

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

RESPONSE TO INTERROGATORY NO. 13:

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's goods offered under the marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are offered in the United States primarily via a direct sales force to hospitals, surgical centers and physicians. *See also* Response to Interrogatory No. 5 of these Responses to Applicant's First Set of Interrogatories to Opposer.

INTERROGATORY NO. 14:

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

RESPONSE TO INTERROGATORY NO. 14:

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Jim Alecxih, Vice President of U.S. Sales at Intuitive Surgical, Inc.

INTERROGATORY NO. 15:

Describe the circumstances under which Opposer first became aware of Applicant's Marks (sic), including but not limited to stating the date(s) upon which Opposer first became

aware of Applicant's Marks (sic), identifying the person or persons at Applicant who first became aware of Applicant's Marks (sic), and stating the manner in which Opposer first became aware of Applicant's Marks (sic).

RESPONSE TO INTERROGATORY NO. 15:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Applicant's Marks[.]" For purposes of this Interrogatory, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of these Interrogatories. Opposer objects to this Interrogatory on the ground that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer first became aware of Applicant's Mark through a Watch Notice that Opposer has in place for its DA VINCI mark and then again became aware of Applicant's Mark when it was published for opposition in the Official Gazette on December 19, 2006.

INTERROGATORY NO. 16:

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

RESPONSE TO INTERROGATORY NO. 16:

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Consumers of goods offered under Opposer's marks DA VINCI and DA VINCI S HD

SURGICAL SYSTEM (Stylized) are medical and health care professionals, including surgeons, doctors, hospital administrators and administrators of outpatient and surgical centers.

INTERROGATORY NO. 17:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Applicant, describe each communication by setting forth the date on which you received such communication, the type of communication (*e.g.*, oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (*e.g.*, member of the consuming public, member of the trade), and your response to the communication.

RESPONSE TO INTERROGATORY NO. 17:

Subject to and without waiving the General Objections set forth above, Opposer responds: Not applicable.

INTERROGATORY NO. 18:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (*e.g.*, oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (*e.g.*, member of the consuming public, member of the trade), and your response to the communication.

RESPONSE TO INTERROGATORY NO. 18:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Applicant's Marks[.]" For purposes of this Interrogatory, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Not applicable.

INTERROGATORY NO. 19:

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify and the grounds for each such opinion.

RESPONSE TO INTERROGATORY NO. 19:

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce the names of expert witnesses Opposer intends to call to testify in this Proceeding in due course.

INTERROGATORY NO. 20:

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

RESPONSE TO INTERROGATORY NO. 20:

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce the names of lay witnesses Opposer intends to call to testify in this Proceeding in due course.

INTERROGATORY NO. 21:

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

RESPONSE TO INTERROGATORY NO. 21:

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will provide exhibits it intends to rely upon in this Proceeding in due course.

INTERROGATORY NO. 22:

If you have sought or received opinions, legal or otherwise, regarding your right to use Opposer's Mark (sic), describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

RESPONSE TO INTERROGATORY NO. 22:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets

"Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine or any other statutory or common law privilege.

INTERROGATORY NO. 23:

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

RESPONSE TO INTERROGATORY NO. 23:

Subject to and without waiving the General Objections set forth above, Opposer responds: Opposer identifies Frank Nguyen, Vice President, Intellectual Property and Licensing at Intuitive Surgical, Inc., and Michelle D. Kahn and Michelle J. Hirth of Sheppard, Mullin, Richter & Hampton, LLP, counsel to Intuitive Surgical, Inc.

INTERROGATORY NO. 24:

Identify those person(s) who had more than a clerical role in searching for documents responsive to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

RESPONSE TO INTERROGATORY NO. 24:

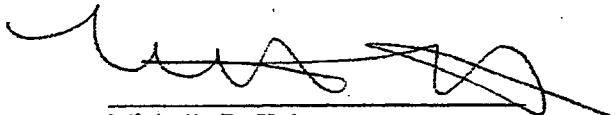
Subject to and without waiving the General Objections set forth above, Opposer responds: Opposer identifies Frank Nguyen, Vice President, Intellectual Property and Licensing

at Intuitive Surgical, Inc., and Michelle D. Kahn and Michelle J. Hirth of Sheppard, Mullin,
Richter & Hampton, LLP, counsel to Intuitive Surgical, Inc.

Dated: November 26, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



Michelle D. Kahn

Michelle J. Hirth

Attorneys for Opposer

INTUITIVE SURGICAL, INC.

Four Embarcadero Center
17th Floor
San Francisco, CA 94111
TEL: (415) 434-9100
FAX: (415) 434-3947

VERIFICATION

I, John F. Runkel, declare as follows:

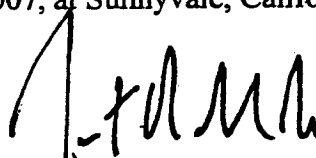
I am in the Senior Vice President and General Counsel of Intuitive Surgical, Inc., Opposer in this Opposition Proceeding, and am authorized to make this verification on behalf of Intuitive Surgical, Inc.

I have read Intuitive Surgical, Inc.'s Responses to Applicant's First Set of Interrogatories to Opposer, and know the contents thereof. The responses were prepared from information gathered by Intuitive Surgical, Inc. and its agents and from a review of various files and records. Subject to the above limitations, I am informed and believe and on that basis allege that the responses given are true and correct.

Having been warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the document resulting therefrom, I declare that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

I declare under penalty of perjury that the above is true and correct and to the best of my knowledge and belief.

Executed this 26th day of November, 2007, at Sunnyvale, California.



John F. Runkel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** was served on Applicant DaVinci Radiology Associates, P.L., by First Class U.S. Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq.
301 Clematis Avenue, Suite 3000
West Palm Beach, Florida 33401

Attorneys for Applicant

This 26th day of November, 2007.



Mironda Lewis

INTUITIVE SURGICAL, INC.,)	
)	
Opposer,)	Opposition No. 91175319
)	
v.)	Serial No. 78/728,786
)	
DAVINCI RADIOLOGY ASSOCIATES,)	Published: December 19, 2006
P.L.,)	
)	
Applicant.)	
)	

Opposer Intuitive Surgical, Inc. ("Opposer") responds and objects to Applicant DaVinci Radiology Associates, P.L.'s ("Applicant") First Requests for Production of Documents and Things to Opposer as follows:

1. Opposer has made a reasonable and good faith effort to respond to Applicant's First Requests for Production of Documents and Things to Opposer (collectively these "Requests" and singly a "Request") and has made a reasonable and good faith effort to locate responsive information. Opposer has not yet completed its discovery or preparation of its case in this Opposition Proceeding. These responses, therefore, are based upon information known to Opposer at this time and on documents presently available and specifically known to Opposer after a reasonable, diligent search. These Responses are made in a good faith effort to

supply such information as is presently known but should in no way be to the prejudice of Opposer's right to produce subsequently discovered information or documents.

2. Each and every individual Request is subject to the general objections set forth herein and these general objections form a part of the responses to each and every Request. These general objections may be specifically interposed for the purpose of clarity in response to a particular Request but the failure to specifically incorporate any general objection should not be construed as a waiver of the objection.

3. Opposer objects to Applicant's Definitions and Instructions to the extent that it attempts to impose on Opposer burdens or requirements in addition to those set forth in the Federal Rules of Civil Procedure and/or 37 Code of Federal Regulations ("C.F.R.") Part 2 or attempts to require Opposer to respond in any manner beyond that which is required by the Federal Rules of Civil Procedure and/or 37 C.F.R. Part 2.

4. Opposer objects to each Request to the extent that it seeks information or documents protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

5. Opposer objects to Definitions Paragraph C of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, on the grounds that it is overly broad and unduly burdensome and to the extent that it results in Requests that seek documents protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

6. Opposer objects to Definitions Paragraph E Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, to the extent that it results in Requests that

seek documents protected from disclosure by the attorney-client privilege, the work product doctrine and other statutory or common law privileges.

7. Opposer objects to Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, to the extent that it results in Requests that are overly broad and unduly burdensome and neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence in that consumers of Opposer's goods offered under Opposer's Marks do not include "patients and those upon whom diagnostic test are performed."

8. Opposer objects to Definitions Paragraph I of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, on the grounds that it is overly broad and unduly burdensome and to the extent it results in Requests that seek documents protected from disclosure as confidential personnel information or by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All documents that refer or relate to the conception of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 1:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to

mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the ground that it is compound.

REQUEST NO. 2:

All documents that refer or relate to your selection process for Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 2:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege.

REQUEST NO. 3:

All documents that refer or relate to your decision to adopt Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 3:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of

Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege.

REQUEST NO. 4:

All documents that refer or relate to your decision to file with the United States Patent and Trademark Office an application to register Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 4:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege.

REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 5:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as

defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer.

Opposer further objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer is not aware of any responsive documents within its possession, custody or control at this time.

REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 6:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding protectability of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 7:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

REQUEST NO. 8:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 8:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product

doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

REQUEST NO. 9: [second Request No. 8 in Applicant's First Set of Requests for Production of Documents and Things to Opposer; renumbered here as Request No. 9]

A sample or specimen showing trademark use of the mark for services, if any, identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 9:

Opposer objects to this Request on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is vague and ambiguous as to the undefined term "mark[.]" and is compound as it incorporates here by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. For purposes of this Request, Opposer interprets "mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Not applicable. No services are identified in Opposer's response to Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer as no services are identified that are not inherent to the provision of goods under Opposer's Marks.

REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 10:

Opposer objects to this Request on the grounds that it is unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: The goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are relatively large in size and quite costly. Accordingly, it is impracticable and overly burdensome for Opposer to produce samples or specimens of the goods offered under its marks. See Opposer's Internet website, www.intuitivesurgical.com, where Applicant may view photographs and videos showing Opposer's goods.

REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 11:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within

its possession, custody and control. *See also* Opposer's Internet website,
www.intuitivesurgical.com.

REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 12:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged, responsive documents within its possession, custody and control. *See also* Opposer's Internet websites www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com.

REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 13:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing

objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged, responsive documents within its possession, custody and control. *See also* Opposer's Internet website, www.intuitivesurgical.com, featuring news stories by CBS News, U.S. News & World Report, Business Week and Newsweek.

REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Applicant but which were received by you.

RESPONSE TO REQUEST NO. 14:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have been intended for Applicant but which were received by you.

RESPONSE TO REQUEST NO. 15:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "materials[.]" and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the

foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Applicant.

RESPONSE TO REQUEST NO. 16:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Opposer further objects to this Request to the extent that it seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence as a result of the use of the term "consuming public" as defined in Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Applicant.

RESPONSE TO REQUEST NO. 17:

Opposer objects to this Request on the ground that it is overly broad and unduly burdensome and to the extent that it seeks documents protected from disclosure by the attorney-

client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 18:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[.]" and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer further objects to this Request to the extent that it seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence as a result of the use of the term "consuming public" as defined in Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and

General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 19:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 19:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[.]" and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 20:

All documents that refer or relate to Applicant's Marks (sic) that were generated prior to the commencement of this Opposition Proceeding.

RESPONSE TO REQUEST NO. 20:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[.]" and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No non-privileged, responsive documents are within Opposer's possession, custody or control at this time. See Privilege Log of Opposer Intuitive Surgical, Inc. served herewith.

REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 21:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, and to the extent that it calls for documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within its possession, custody and control.

REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 22:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of responsive documents within its possession, custody and control.

REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 23:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is vague and ambiguous as to the undefined term "objections[.]" and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "objections" to mean cease and desist correspondence, Opposition or Cancellation Proceedings before the U.S. Patent & Trademark Office Trademark Trial and Appeal Board and lawsuits initiated in Federal court. For purposes

of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 24:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "objection[.]" and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "objection" to mean cease and desist correspondence, Opposition or Cancellation Proceedings before the U.S. Patent & Trademark Office Trademark Trial and Appeal Board and lawsuits initiated in Federal court. For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it seeks documents protected from disclosure by the attorney-

client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 25:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer objects to this Request as overly broad and unduly burdensome and vague and ambiguous as to geographic location. For purposes of this Request, Opposer will interpret this Request to refer to licenses pertaining to the United States only. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 26:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer objects to this Request as overly broad and unduly burdensome and vague and ambiguous as to geographic location. For purposes of this Request, Opposer will interpret this Request to refer to licenses pertaining to the United States only. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged/confidential documents within its possession, custody and control.

REQUEST NO. 27:

All documents identified in your responses to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

RESPONSE TO REQUEST NO. 27:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents, if any were identified in its responses to Applicant's First Set of Interrogatories to Opposer, within its possession, custody and control.

REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

RESPONSE TO REQUEST NO. 28:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within its possession, custody or control.

REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

RESPONSE TO REQUEST NO. 29:

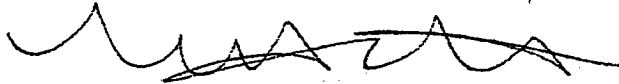
Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and premature. Subject to and without waiving the foregoing objections and the

General Objections set forth above, Opposer responds: Opposer will produce documents it intends to rely upon in this Opposition Proceeding, and that have not been produced in response to these Requests, in due course.

Dated: November 20, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

By



Michelle D. Kahn

Michelle J. Hirth

Attorneys for Opposer

INTUITIVE SURGICAL, INC.

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TEL: (415) 434-9100
FAX: (415) 434-3947

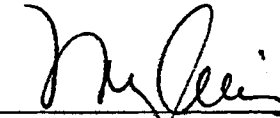
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONSES TO APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER** was served on Applicant DaVinci Radiology Associates, P.L., by First Class U.S. Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq.
301 Clematis Avenue, Suite 3000
West Palm Beach, Florida 33401

Attorneys for Applicant

This 26th day of November, 2007.



Mironda Lewis

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVTNCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,786

Published: December 19, 2006

Trademark: DAVINCI DIAGNOSTIC

IMAGING & Design

APPLICANT'S RESPONSE TO

OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

NOW COMES, Applicant, DaVinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's First Request for Admissions to Applicant, responds as follows:

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that your Application is for registration of the mark- DAVINCI DIAGNOSTIC IMAGING & Design is for use in connection with medical diagnostic imaging services.

Response: Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that you have disclaimed the term "DIAGNOSTIC" as part of your Application for registration of DAVINCI DIAGNOSTIC IMAGING & Design.

Response: Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that consumers of the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients, medical doctors, surgeons and other health care professionals.

Response: Denied. Consumers of the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients.

REQUEST FOR ADMISSION NO. 4:

Admit that the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include high--field magnetic resonance imaging, CT scans, digital mammography, and PET, CT fusion (Positron Emission Tomography/Computed Tomography).

Response: Admitted that the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include, but are not limited to, high--field magnetic resonance imaging, CT scans, digital mammography, and PET, CT fusion (Positron Emission Tomography/Computed Tomography).

REQUEST FOR ADMISSION NO. 5:

Admit that the mark DAVINCI DIAGNOSTIC IMAGING & Design was first used as a trademark in commerce in association with medical diagnostic imaging services on August 1, 2005.

Response: Admitted.

DATED: January 15, 2008

Respectfully submitted,



Matthew T. Vanden Bosch
Attorney at Law
301 Clematis Avenue
Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT** was served on Opposer, Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth
Sheppard, Mullin, Richter & Hampton, LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111

Attorneys for Opposer

This 15th day of January, 2008



Matthew T. Vanden Bosch

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,
v.

Opposition No, 91175319

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

Serial No.78/728,786

Published: December 19, 2006

Trademark: DAVINCI
DIAGNOSTIC IMAGING &
Design

APPLICANT'S RESPONSE TO
OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

NOW COMES, Applicant, Davinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's Second Set of Interrogatories to Applicant, responds as follows:

INTERROGATORY NO. 1:

Describe with specificity the business relationship between Applicant and Medical Specialists of the Palm. Beaches, Inc.

Applicant provides diagnostic imaging services to MSPB under a contract.

INTERROGATORY NO. 2:

Describe with particularity Dr. Howard Butler's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

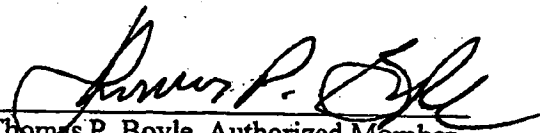
None.

Describe with particularity Dr. Thomas P. Boyle's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

Dr. Boyle is an employee of MSPB as of December 1, 2007, providing professional medical services specifically involving varicose vein treatment, non-surgical aesthetic and cosmetic and phlebology procedures (including, without limitation, botox, lasers, fillers, thermage, and ultrasound. Dr. Boyle provides these services as a member of the operating division of MSPB sometimes referred to as the "V-Boutique."

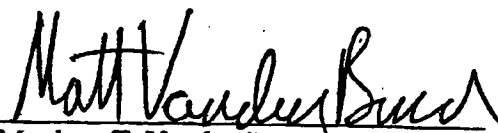
I swear or affirm that the above statements are true to the best of my information and belief.

Dated: January 15, 2008


Thomas P. Boyle, Authorized Member,
DaVinci Radiology Associates, P.L.

Respectfully submitted,

Dated: January 15, 2008


Matthew T. Vanden Bosch
Attorney at Law
301 Clematis Avenue
Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S ANSWER TO OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT** was served on Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Embarcadero Four, 17th Floor

San Francisco, California 94111
Attorneys for Opposer

This 15th day of January, 2007.


Matthew T. Vanden Bosch

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

v.

DAVINCI RADIOLOGY ASSOCIATES,
P.L.,

Applicant.

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

APPLICANT'S SUPPLEMENTAL RESPONSE TO
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

NOW COMES, Applicant, Davinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its supplemental response to Opposer's First Set of Interrogatories to Applicant, responds as follows:

INTERROGATORY NO. 3:

Identify and describe all goods and services on which you use, have used or intend to use Applicant's Mark.

By means of that certain Exclusive License Agreement, by and between Applicant and Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB"), dated August 1, 2005 (the "Agreement"), Applicant licensed MSPB to use exclusively Applicant's Mark in connection with MSPB's diagnostic imaging services. A copy of the Agreement is attached hereto. MSPB consists of consisting of 50+ physicians licensed to practice medicine in the State of Florida. MSPB conducts its diagnostic imaging services only within Palm Beach County, Florida. "Diagnostic imaging services" are nonsurgical, noninterventional

imaging services; and, in this case, consist of Magnetic Resonance Imaging (MRI); Computed Tomography (CT); Positron Emission Tomography (PET) Scans; and, Digital Mammography. These services are performed under the care or supervision of a board-certified diagnostic imaging specialist.

INTERROGATORY NO. 5:

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Other than the davinci-imaging.com website, some signs around 101 JFK Drive, Atlantis, Florida, 33462 (the "building"), old brochures in the building, business cards which are rarely used, and two carpets, one at the entrance and one in the elevator of the building, MSPB does not market its diagnostic imaging services with Applicant's trademark. Upon further information and belief, MSPB is removing any reference to DaVinci Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

INTERROGATORY NO. 6:

State the date(s) upon which you began to use Applicant's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Upon information and belief, Applicant's Mark was first used in commerce on August 1, 2005.

INTERROGATORY NO. 8:

Describe each study, search and investigation that is being or has been conducted or

obtained by you or on your behalf regarding the trademark availability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

On November 12, 2003, Kirk Friedland, attorney at law, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci" through the Trademark Electronic Search System (Tess).

INTERROGATORY NO. 11:

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant objects to the term "promotion of services" as vague and ambiguous. In an attempt to respond to this interrogatory further, Applicant states that other than the davinci-imaging.com website, some signs around the building, old brochures in the building, business cards which are rarely used, and two carpets, one at the entrance and one in the elevator of the building, MSPB does not promote its diagnostic services with Applicant's trademark. Upon further information and belief, MSPB is presently removing any reference to DaVinci Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

INTERROGATORY NO. 13:

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users

of said goods and/or services.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Applicant objects to the term "channels of trade" as vague and ambiguous. In an attempt to respond to this interrogatory further, Applicant states that other than the davinci-imaging.com website, some signs around the building, old brochures in the building, business cards which are rarely used, and two carpets, one at the entrance and one in the elevator of the building, MSPB does not move Applicant's trademark through any channels of trade. Upon further information and belief, MSPB is removing any reference to DaVinci Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

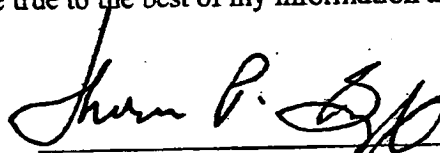
INTERROGATORY NO. 15:

Describe the circumstances under which Applicant first became aware of Opposer's Marks, including but not limited to stating the date(s) upon which Applicant first became aware of Opposer's Marks, identifying the person or persons at Applicant who first became aware of Opposer's Marks, and stating the manner in which Applicant first became aware of Opposer's Marks.

On or about November 13, 2003, Kirk Friedland, attorney at law, and former counsel to Applicant, conducted an initial Federal trademark search through TESS for both "DaVinci" and "Da Vinci" and found Opposer's Marks.

I swear or affirm that the above statements are true to the best of my information and belief.

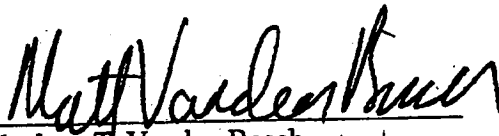
Dated: March 5, 2008



Thomas P. Boyle, Authorized Member
DaVinci Radiology Associates, P.L.

Respectfully submitted,

Dated: March 5, 2008


Matthew T. Vanden Bosch
Attorney at Law
301 Clematis Avenue
Suite 3000
West Palm Beach, FL 33401
(561) 736-4696

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S ANSWER TO
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served on
Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Embarcadero Four, 17th Floor
San Francisco, California 94111
Attorneys for Opposer
This 5th day of March, 2008.


Matthew T. Vanden Bosch

EXHIBIT E

Document Description: Application Mail / Create Date: 07-Oct-2005

Previous Page

Next Page

You are currently on page 1 of 3

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78728786

Filing Date: 10/07/2005

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK FILE NAME	\\TICRS\EXPORT8\IMAGEOUT8\787287\78728786.xml\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	DaVinci Diagnostic Imaging
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of A stylized letter "i" with a silhouette of the Vitruvian man.
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	1108 x 654
OWNER SECTION	
NAME	DaVinci Radiology Associates, P.L.
INTERNAL ADDRESS	Suite 1330
STREET	505 South Flagler Drive
CITY	West Palm Beach
STATE	Florida
ZIP/POSTAL CODE	33401
COUNTRY	United States
PHONE	561 655-8200

FAX	561 655-1389
EMAIL	kirklaw@gate.net
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Florida
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	044
DESCRIPTION	medical diagnostic imaging services
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2005
FIRST USE IN COMMERCE DATE	At least as early as 08/01/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT8\IMAGEOUT8\787 \\287\78728786\xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	identification sign
SIGNATURE SECTION	
SIGNATURE	/kirk friedland/
SIGNATORY NAME	Kirk Friedland
SIGNATORY DATE	10/07/2005
SIGNATORY POSITION	Attorney
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
ATTORNEY	
NAME	Kirk Friedland
FIRM NAME	Kirk Friedland Law Office
INTERNAL ADDRESS	Suite 1330
STREET	505 South Flagler Drive

CITY	West Palm Beach
STATE	Florida
ZIP/POSTAL CODE	33401
COUNTRY	United States
PHONE	561 655-8200
FAX	561 655-1389
EMAIL	kirklaw@gate.net
AUTHORIZED EMAIL COMMUNICATION	Yes
CORRESPONDENCE SECTION	
NAME	Kirk Friedland
FIRM NAME	Kirk Friedland Law Office
INTERNAL ADDRESS	Suite 1330
STREET	505 South Flagler Drive
CITY	West Palm Beach
STATE	Florida
ZIP/POSTAL CODE	33401
COUNTRY	United States
PHONE	561 655-8200
FAX	561 655-1389
EMAIL	kirklaw@gate.net
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Fri Oct 07 12:55:20 EDT 2005
TEAS STAMP	USPTO/BAS-661496051-20051 007125520019186-78728786- 200747e64ccdf9b4f2be68291 66776eabe4-CC-1332-200510 07125021267926

Trademark/Service Mark Application, Principal Register

Serial Number: 78728786

Filing Date: 10/07/2005

To the Commissioner for Trademarks:

MARK: DaVinci Diagnostic Imaging (stylized and/or with design, see mark)

The literal element of the mark consists of DaVinci Diagnostic Imaging.

The mark consists of A stylized letter "i" with a silhouette of the Vitruvian man.

The applicant, DaVinci Radiology Associates, P.L., a LIMITED LIABILITY COMPANY organized under the laws of Florida, residing at Suite 1330, 505 South Flagler Drive, West Palm Beach, Florida, United States, 33401, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 044: medical diagnostic imaging services

In International Class 044, the mark was first used at least as early as 08/01/2005, and first used in commerce at least as early as 08/01/2005, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) identification sign.

Specimen - 1

The applicant hereby appoints Kirk Friedland of Kirk Friedland Law Office, Suite 1330, 505 South Flagler Drive, West Palm Beach, Florida, United States, 33401 to submit this application on behalf of the applicant.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: kirklaw@gate.net.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /kirk friedland/ Date: 10/07/2005

Signatory's Name: Kirk Friedland

Signatory's Position: Attorney

Mailing Address:

Kirk Friedland

Suite 1330

505 South Flagler Drive

West Palm Beach, Florida 33401

RAM Sale Number: 1332

RAM Accounting Date: 10/07/2005

Serial Number: 78728786

Internet Transmission Date: Fri Oct 07 12:55:20 EDT 2005

TEAS Stamp: USPTO/BAS-661496051-20051007125520019186

-78728786-200747e64ccdf9b4f2be6829166776

eabe4-CC-1332-20051007125021267926

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- *Questions about USPTO programs: Please e-mail USPTO Contact Center (UCC).*

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Document Description: Application Mail / Create Date: 07-Oct-2005

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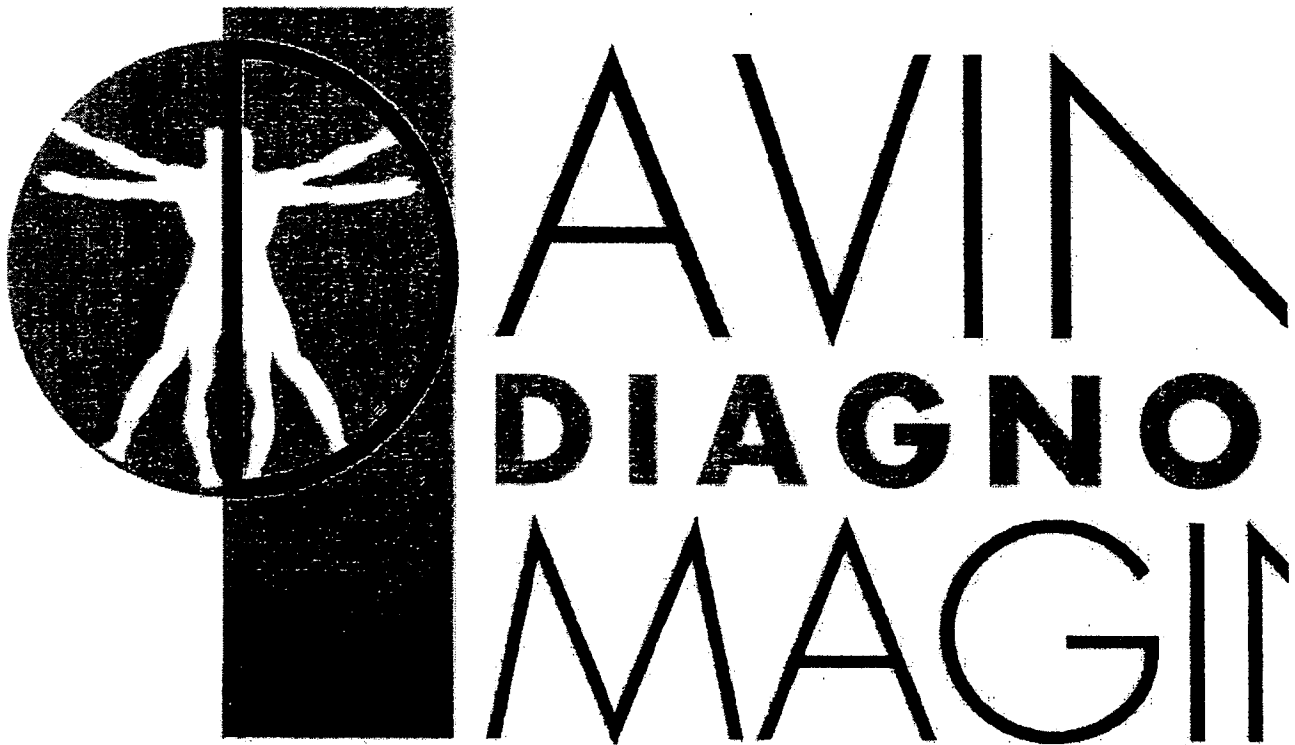
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- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

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Document Description: Application Mail / Create Date: 07-Oct-2005

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- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

Document Description: **Offc Action Outgoing** Mail / Create Date: **12-Apr-2006**

To: DaVinci Radiology Associates, P.L. (kirklaw@gate.net)

Subject: TRADEMARK APPLICATION NO. 78728786 - DAVINCI
DIAGNOSTIC IMAGING - N/A

Sent: 4/12/2006 12:55:01 PM

Sent As: ECOM102@USPTO.GOV

Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE**SERIAL NO:** 78/728786**APPLICANT:** DaVinci Radiology Associates, P.L.***78728786*****CORRESPONDENT ADDRESS:**

KIRK FRIEDLAND
KIRK FRIEDLAND LAW OFFICE
505 S FLAGLER DR STE 1330
WEST PALM BEACH, FL 33401-5951

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: DAVINCI DIAGNOSTIC IMAGING**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A**CORRESPONDENT EMAIL ADDRESS:**kirklaw@gate.net

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/728786

The assigned examining attorney has reviewed the referenced application and determined the following.

SEARCH OF OFFICE RECORDS

The examining attorney has searched the Office records and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

DISCLAIMER

The Office can require an applicant to disclaim exclusive rights to an unregistrable part of a mark, rather than refuse registration of the entire mark. Trademark Act Section 6(a), 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), 15 U.S.C. §1052(e), the Office can refuse registration of the entire mark where it is determined that the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Thus, the Office may require the disclaimer of a portion of a mark which, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). TMEP §1213.03(a). If an applicant does not comply with a disclaimer requirement, the Office may refuse registration of the entire mark. TMEP §1213.01(b).

A "disclaimer" is thus a written statement that an applicant adds to the application record that states that applicant does not have exclusive rights, separate and apart from the entire mark, to particular wording and/or to a design aspect. The appearance of the applied-for mark does not change.

The following cases explain the disclaimer requirement more fully: *Dena Corp. v. Belvedere Int'l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991); *In re Kraft, Inc.*, 218 USPQ 571 (TTAB 1983); *In re EBS Data Processing, Inc.*, 212 USPQ 964 (TTAB 1981); *In re National Presto Industries, Inc.*, 197 USPQ 188 (TTAB 1977).

Applicant must insert a disclaimer of DIAGNOSTIC in the application because it merely identifies a characteristic of the services. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §1213.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use "DIAGNOSTIC" apart from the mark as shown.

See *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

COLOR DRAWING

The drawing of the mark contains color. Color drawings must be accompanied by the following: (1) a color claim naming the colors that are a feature of the mark; and (2) a separate statement describing where the color(s) appear on the mark. A color drawing will not publish without both of these statements.

A properly worded color claim would read as follows:

The color(s) *<name the color(s)>* are claimed as a distinctive feature of the mark.

A properly worded description would read as follows:

The color(s) *<name the color(s)>* appear in *<specify portion of mark on which color(s) appear>*.

SPECIMEN OF USE

The applicant has submitted a specimen that appears to be temporary in nature, e.g. a temporary reproduction of the mark, rather than showing the mark identifying the services in the sale or advertising of such services. The applicant must submit a specimen of a more permanent nature. 37 C.F.R. §2.61(b); TMEP §904.04(a).

The applicant must submit a specimen, and must submit the following statement:

The specimen was in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. Section 2.20. 37 C.F.R. Section 2.71(d)(1).

The following is a properly worded declaration under 37 C.F.R. Section 2.20. At the end of the response, the applicant should insert the declaration signed by someone authorized to sign under 37 C.F.R. Section 2.33(a).

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

/Cheryl Clayton/
Attorney
Law Office 102
571-272-9102

HOW TO RESPOND TO THIS OFFICE ACTION:

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- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

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VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

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Document Description: Response to Office Action Mail / Create Date: 11-Oct-2006

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You are currently on page 1 of 2

PTO Form 1957 (Rev 9/2005)

OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78728786
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	044
DESCRIPTION	medical diagnostic imaging services
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2005
FIRST USE IN COMMERCE DATE	At least as early as 08/01/2005
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	044
DESCRIPTION	medical diagnostic imaging services
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/2005
FIRST USE IN COMMERCE DATE	At least as early as 08/01/2005
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce as of the filing date of the application."
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT2\IMAGEOUT2\787287\78728786.xml\1\RO A0002.JPG
SPECIMEN DESCRIPTION	Business card
ADDITIONAL STATEMENTS SECTION	
"No claim is made to the exclusive right to use	

DISCLAIMER	"DIAGNOSTIC" apart from the mark as shown."
DESCRIPTION OF THE MARK (and Color Location, if applicable)	"The mark consists of a white Vatruvian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimosed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "iMAGING" is brown, the dot over the letter "i" is yellow."
COLOR(S) CLAIMED (If applicable)	"The color(s) white, brown and yellow is/are claimed as a feature of the mark."
SIGNATURE SECTION	
DECLARATION SIGNATURE	/kirk friedland/
SIGNATORY'S NAME	Kirk Friedland
SIGNATORY'S POSITION	Attorney
DATE SIGNED	10/11/2006
RESPONSE SIGNATURE	/kirk friedland/
SIGNATORY'S NAME	Kirk Friedland
SIGNATORY'S POSITION	Attorney
DATE SIGNED	10/11/2006
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Oct 11 17:43:58 EDT 2006
TEAS STAMP	USPTO/ROA-72.144.209.207- 20061011174358071693-7872 8786-34063d19e4298f8a091a 371b62e0d19023-N/A-N/A-20 061011171619414844

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 78728786 has been amended as follows:

Classification and Listing of Goods/Services

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 044 for medical diagnostic imaging services

Original Filing Basis: 1(a).

Proposed: Class 044 for medical diagnostic imaging services

Filing Basis: 1(a).

Section 1(a), Use in Commerce: The mark was first used at least as early as 08/01/2005 and first used in commerce at least as early as 08/01/2005, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 044.

The specimen(s) submitted consists of Business card.

For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in commerce as of the filing date of the application."

Specimen File1

Additional Statements

"No claim is made to the exclusive right to use "DIAGNOSTIC" apart from the mark as shown."

"The mark consists of a white Vatruvian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimosed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "IMAGING" is brown, the dot over the letter "i" is yellow."

"The color(s) white, brown and yellow is/are claimed as a feature of the mark."

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /kirk friedland/ Date: 10/11/2006

Signatory's Name: Kirk Friedland

Signatory's Position: Attorney

Response Signature

Signature: /kirk friedland/ Date: 10/11/2006

Signatory's Name: Kirk Friedland

Signatory's Position: Attorney

Serial Number: 78728786

Internet Transmission Date: Wed Oct 11 17:43:58 EDT 2006

TEAS Stamp: USPTO/ROA-72.144.209.207-200610111743580

71693-78728786-34063d19e4298f8a091a371b6

2e0d19023-N/A-N/A-20061011171619414844

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Thomas P. Boyle M.D.
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Document Description: Notice of Publication Mail / Create Date: 29-Nov-2006

Side - 1

**NOTICE OF PUBLICATION UNDER §12(a)****MAILING DATE: Nov 29, 2006****PUBLICATION DATE: Dec 19, 2006**

The mark identified below will be published in the Official Gazette on Dec 19, 2006. Any party who believes they will be damaged by registration of the mark may oppose its registration by filing an opposition to registration or a request to extend the time to oppose within thirty (30) days from the publication date on this notice. If no opposition is filed within the time specified by law, the USPTO may issue a Certificate of Registration.

To view the Official Gazette online or to order a paper copy, visit the USPTO website at <http://www.uspto.gov/web/trademarks/tmog/> any time within the five-week period after the date of publication. You may also order a printed version from the U.S. Government Printing Office (GPO) at <http://bookstore.gpo.gov> or 202-512-1800. To check the status of your application, go to <http://tarr.uspto.gov/>.

SERIAL NUMBER: 78728786**MARK: DAVINCI DIAGNOSTIC IMAGING****OWNER: DaVinci Radiology Associates, P.L.**

Side - 2

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COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
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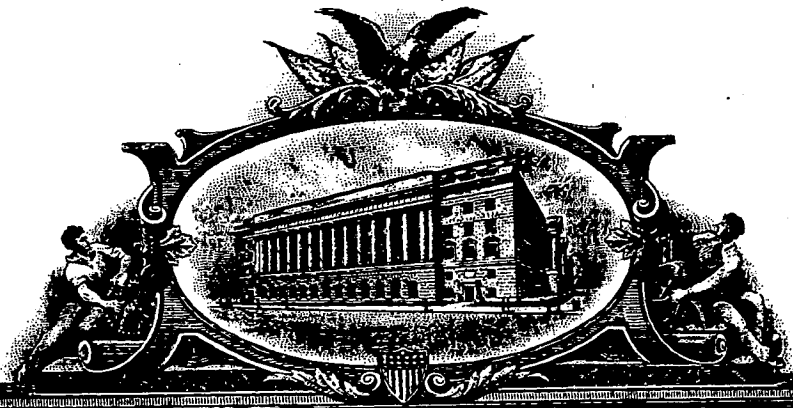
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EXHIBIT F

1688490



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 05, 2008

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,628,871 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *October 01, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant***

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**

(Shirley D. Harris)
SHIRLEY D. HARRIS
Certifying Officer



Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,628,871

United States Patent and Trademark Office

Registered Oct. 1, 2002

**TRADEMARK
PRINCIPAL REGISTER**

DA VINCI

INTUITIVE SURGICAL, INC. (DELAWARE CORPORATION)
1340 WEST MIDDLEFIELD ROAD
MOUNTAIN VIEW, CA 94043

FOR: COMPUTERIZED SURGICAL MANIPULATION SYSTEM COMPRISED OF SURGEON'S CONSOLE, MASTER CONTROL, IMMERSIVE VIDEO DISPLAY, CAMERA IMAGE PROCESSING EQUIPMENT, SURGICAL MANIPULATION SYSTEM SOFTWARE AND INSTRUCTIONAL MANUALS PROVIDED AS A UNIT, PATIENT-SIDE CART WITH SET-UP ARMS AND MANIPULATOR SLAVE ARMS, STERILE ADAPTORS TO CONNECT ARMS TO INSTRUMENTS, AND A FULL LINE OF RESPONSABLE, IN OTHER WORDS, LIMITED RE-USE TOOLS, NAMELY, LAPAROSCOPES, ENDOSCOPES, TROCARS, CANNULAS, CUTTERS, CLAMPS, ELEVATORS, GOUGES, KNIVES, SCOPE PREHEATERS, LIGHT SOURCES, CABLES AND COMPONENT PARTS, ELECTROSURGICAL INSTRUMENTS, ELECTROCAUTERY INSTRUMENTS, LASER INSTRUMENTS, ULTRASOUND INSTRUMENTS, LENS CLEANING, SCRUB AND BIOPSY BRUSHES, CLIP APPLIERS AND CLIPS, TACK APPLIERS AND TACKS, APPLICATORS, LIGATURE CARRIERS, NEEDLE HOLDERS,

CLAMPS, HEMOSTATS, GRASPERS, CURETTES, INSTRUMENT GUIDES, LIGATURE PASSING AND KNOTTING INSTRUMENTS, NEEDLE, RETRACTORS, SNARES, STYLETS, FORCEPS, DISSECTORS, CALIPERS, SCISSORS, SUCTION AND IRRIGATION PROBES, STERILE DRAPES, HEMOSTATS, AMPUTATION HOOKS, OSTETOMES, SAWS, RETAINERS, SUTURING APPARATUS, MEASURING TAPES, CHISELS AND CONTRACTORS, FILES, SKIN GRAFT EXPANDERS, LANCETS, MALLETS, PLIERS, HAMMERS, RASPS, SPATULAS, AND STRIPPERS; A FULL LINE OF FDA CLASSES I AND II EXEMPT SURGICAL INSTRUMENTS, NAMELY, SCALPELS, SCALPEL BLADES AND HANDLES, STAPLERS, TACKERS, CLIP APPLIERS, ELECTROCAUTERY TOOLS FORCEPS, NEEDLE HOLDERS, GUIDES AND DRIVERS, GRASPERS, AND KITENERS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-7-2000; IN COMMERCE 7-7-2000.

SN 75-982,190, FILED 3-19-1999.

VERNA BETH RIRIE, EXAMINING ATTORNEY

EXHIBIT G

09-18-2001

U.S. Patent & TMO/TM Mail Rpt Dt #01

105

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Intuitive Surgical, Inc.

Serial No.: [REDACTED] 75982190

Filed: March 19, 1999

For: DA VINCI

REQUEST TO DIVIDE APPLICATION

Hon. Asst. Comm. For Trademarks
United States Patent and Trademark Office
Box: ITU/Divisional Unit
2900 Crystal Drive
Arlington, VA 22202-3513

Repln. Ref: 03/29/2002 ZCARRITH 0015573200
DAI:501395 Name/Number:75664269
FC: 704 \$225.00 CR

Adjustment date: 03/29/2002 ZCARRITH
10/09/2001 TSMITH 00000215 501395 75664269
02 FC:361 100.00 CR -225.00 OP

10/09/2001 TSMITH 00000215 501395 75664269
Sir: 100.00 OP
01 FC:379 100.00 CH 225.00 OP
02 FC:361

I. REQUEST TO DIVIDE INTO TWO SEPARATE APPLICATIONS

Pursuant to 37 C.F.R. §2.87 and T.M.E.P. 1105.06, Applicant requests that the subject Application be divided into two separate applications; one covering the goods set forth in the original Application and one covering the services set forth in that Application.

Applicant requests that the first separate application cover the following goods, which were set forth in the original Application:

"Medical devices, namely, a computerized surgical manipulation system comprised of surgeon's console, master control, immersive

video display, surgical manipulation system software and instructional manuals provided as a unit; patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments; medical devices, namely, a full line of resposable (limited re-use) tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub, and biopsy brushes, clip applicators and clips, tack applicators and tacks, applicators, ligature carriers/needle holders, clamps/hemostats/graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction/irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainer, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancet, mallets, pliers, hammers, rasps, spatulas, and strippers; full line of FDA Classes I and II exempt surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tacker, clip applicators, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners" in International Class 10.

Applicant further requests that the second separate application cover the following services, which were set forth the original Application:

"Educational services, namely, conducting seminars, conferences, workshops, reference site training, and classes for physicians in the field of minimally invasive surgical procedures and in the use of minimally invasive surgical devices and distributing training manuals, white papers and journals in connection therewith" in International Class 41; and

"Medical services, namely, conducting minimally invasive surgery" in International Class 42.

Applicant submits herewith a check in the amount of \$325.00 to cover the single new application created as a result of this Request to Divide Application. Applicant submits simultaneously herewith a Request for Extension of Time, by which it seeks to extend its time to file a Statement of Use for the second divided application covering its services. If anything further is required to support this request, please contact the undersigned attorney to indicate

what is required. Applicant respectfully requests that the subject Application be divided into two separate applications.

II. CORRESPONDENCE

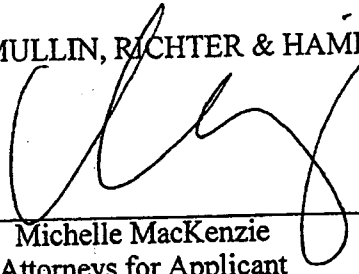
Applicant requests that all further correspondence relating to the prosecution of the subject Application or to this Request to Divide Application be directed to the undersigned attorney, who is associated with the San Francisco Office of Sheppard Mullin Richter & Hampton, rather than to the previously identified individual at Townsend and Townsend and Crew. A Revocation and New Power of Attorney form appointing the undersigned has been filed with the Patent and Trademark Office, and a copy of that form is enclosed herewith.

If any additional information or documentation is required to support this request, or if there are any questions, kindly contact the undersigned attorney.

Dated: September 18, 2001

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By


Michelle MacKenzie
Attorneys for Applicant
INTUITIVE SURGICAL, INC.

Four Embarcadero Center
17th Floor
San Francisco, CA 94111
TEL: (415) 434-9100
FAX: (415) 434-3947

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Maria Mares

REVOCATION OF POWER OF ATTORNEY AND
APPOINTMENT OF NEW ATTORNEY

In the United States Patent and Trademark Office

In re Application of:

Intuitive Surgical, Inc.

Appln. Ser. No.:

75982190

Trademark:

DA VINCI

Filing Date:

March 19, 1999

Hon. Commissioner Of Trademarks
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202-3513

APPOINTMENT OF NEW ATTORNEY

Applicant hereby revokes all previous Powers of Attorney and appoints: SHEPPARD, MULLIN, RICHTER & HAMPTON LLP, a firm including Michelle D. Kahn and Michelle MacKenzie, members of the State Bar of California, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments thereto, to receive the Certificate of Registration and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all communications to:

Michelle D. Kahn
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111
(415) 434-9100

Dated:

07/24/00

By:

David Shaw
Chief Patent Counsel

09-18-2001

U.S. Patent & TMO/TM Mail Rpt Dt #01

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

SEVENTEENTH FLOOR

FOUR EMBARCADERO CENTER

SAN FRANCISCO, CALIFORNIA 94111-4106

TELEPHONE (415) 434-9100

FACSIMILE (415) 434-3947

WRITER'S DIRECT LINE
(415) 774-2910

OUR FILE NUMBER
38T-75221

September 18, 2001

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United States Patent and Trademark Office
Box: ITU/Divisional Unit
2900 Crystal Drive
Arlington, VA 22202

Re: Request to Divide Application

Trademark: DA VINCI

Intuitive Surgical, Inc.

Serial Number: 75982190

Our Reference No.: 38T-75221

Dear Sir:

Enclosed for filing please find a Request to Divide Application for the trademark DA VINCI in the name of Intuitive Surgical Inc.

Our check in the amount of \$325.00 is enclosed in payment of the filing fee. Please charge any additional fees or make any credits to Deposit Account No. 501395.

Very truly yours,

M. MacKenzie
Michelle MacKenzie

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures

cc: Michelle Kahn

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2001 OCT 11 A 5 04-2002 MAR 23 P 1:25

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T.M.S.D.

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T.M.E.O.

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Maria Mares

EXHIBIT H



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10	78961072		DA VINCI	TARR	LIVE
11	78942311		DA VINCI SOLID SURFACE	TARR	LIVE
12	78901683		DA VINCI IRON	TARR	LIVE
13	78894300		DA VINCI KIDS	TARR	LIVE
14	78790528		DA VINCI	TARR	LIVE
15	78775021		DA VINCI ENGINEERED AESTHETICS	TARR	LIVE
16	78771219	3271750	DA VINCI DA V VINCI	TARR	LIVE
17	78710993	3349697	DA VINCI	TARR	LIVE
18	78663811	3106667	DA VINCI	TARR	LIVE
19	78661765	3175493	DA VINCI	TARR	LIVE
20	78616347	3326114	SPIRIT OF DA VINCI	TARR	LIVE
21	78598391	3071008	DA VINCI AWARDS	TARR	LIVE
22	78411370		THE DA VINCI CODE	TARR	LIVE
23	78479654	3130873	DA VINCI	TARR	LIVE

24	78411392		THE DA VINCI CODE	TARR	LIVE
25	78411388		THE DA VINCI CODE	TARR	LIVE
26	78321973		DA VINCI DIET	TARR	LIVE
27	78499891	3028304	DA VINCI	TARR	LIVE
28	78468309	3330664	DA VINCI DIAMONDS	TARR	LIVE
29	78467266		DA VINCI'S CHALLENGE	TARR	LIVE
30	78464324		DA VINCI	TARR	LIVE
31	78460236	3091339	DA VINCI	TARR	LIVE
32	78457786	3011086	DA VINCI DISCOVERY CENTER OF SCIENCE AND TECHNOLOGY	TARR	LIVE
33	78457784	3015317	DA VINCI DISCOVERY CENTER OF SCIENCE AND TECHNOLOGY	TARR	LIVE
34	78445473		DA VINCI DIET	TARR	LIVE
35	78435028		THE DA VINCI CON	TARR	LIVE
36	78431334	2967121	DA VINCI	TARR	LIVE
37	78411385		THE DA VINCI CODE	TARR	LIVE
38	78411381		THE DA VINCI CODE	TARR	LIVE
39	78411376		THE DA VINCI CODE	TARR	LIVE
40	78394663	2997404	DA VINCI WRITER	TARR	LIVE
41	78370221	3211783	DA VINCI PORCELAIN VENEERS	TARR	LIVE
42	78370219	3146284	DA VINCI SMILES	TARR	LIVE
43	78368073		BABY DA VINCI	TARR	LIVE
44	78359048		LITTLE DA VINCI	TARR	LIVE
45	78357733	3096437	DA VINCI VENEERS	TARR	LIVE
46	78357543		DA VINCI	TARR	LIVE
47	78326560	3234180	DA VINCI CODE	TARR	LIVE
48	78219332		DA VINCI'S	TARR	LIVE
49	77447698		DA VINCI	TARR	LIVE
50	77438689		DA VINCI ENVELOPE	TARR	LIVE

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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
51	77321258		DA VINCI CENTER	TARR	LIVE
52	77391746		DA VINCI CAPERS A PERSONAL RENAISSANCE JOURNEY	TARR	LIVE
53	77168040		BABY DA VINCI	TARR	LIVE
54	77353018		CNL DA VINCI CENTER	TARR	LIVE
55	77353015		CNL'S DA VINCI CENTER	TARR	LIVE
56	77292138		DA VINCI SONICPRO	TARR	LIVE
57	77118633		AMERICAN DA VINCI	TARR	LIVE
58	77065947		DA VINCI'S CREW	TARR	LIVE
59	77047301		DA VINCI HOURGLASS	TARR	LIVE
60	77047300		DA VINCI	TARR	LIVE
61	77020705		DA VINCI	TARR	LIVE
62	77016383		DA VINCI MACHINE	TARR	LIVE
63	76687738		DA VINCI SI HD SURGICAL SYSTEM	TARR	LIVE
64	76561549	2941295	DA VINCI	TARR	LIVE
65	76672142		DA VINCI S	TARR	LIVE
66	76665748		DA VINCI S HD SURGICAL SYSTEM	TARR	LIVE
67	76655684		DA VINCI HAIR COLOR PRODUCTS	TARR	LIVE
68	76629742		GELATO DA VINCI	TARR	LIVE
69	76629741		GELATO DA VINCI	TARR	LIVE
70	76575004	3066403	THE DA VINCI EFFECT	TARR	LIVE
71	76517650	2920390	DA VINCI	TARR	LIVE
72	76456498	2982571	DA VINCI'S FLYING MEATBALL	TARR	LIVE

73	76456497	2926146	DA VINCI'S FLYING MEATBALL	TARR	LIVE
74	76291049	2624432	LI'L DAVINCI	TARR	LIVE
75	76248902	2870790	DA VINCI	TARR	LIVE
76	76202882	2948485	DA VINCI SMILE ART CERAMICS	TARR	LIVE
77	76097704	2501807	LEONARDO DA VINCI'S HORSE	TARR	LIVE
78	76069938	2694481	LEONARDO DA VINCI	TARR	LIVE
79	75627993	2547768	DA VINCI	TARR	LIVE
80	75796383		ALEXANDRA DA VINCI	TARR	LIVE
81	75982190	2628871	DA VINCI	TARR	LIVE
82	75889672	2503004	DA VINCI	TARR	LIVE
83	75749181	2950745	ALEXANDRA DA VINCI	TARR	LIVE
84	75519770	2366978	DA VINCI FUSION	TARR	LIVE
85	75492874	2277701	DA VINCI RENAISSANCE	TARR	LIVE
86	75492873	2277700	DA VINCI MADONNA	TARR	LIVE
87	75492872	2277699	DA VINCI CIGARS	TARR	LIVE
88	75492473	2277693	DA VINCI GINEVRA DE BENCI	TARR	LIVE
89	75492472	2277692	DA VINCI MONALISA	TARR	LIVE
90	75490746	2277684	DA VINCI LEONARDO	TARR	LIVE
91	75448341	2240675	THE DA VINCI PROJECT OF CENTRAL NEW YORK	TARR	LIVE
92	75435943	2471858	LEONARDO DA VINCI'S HORSE	TARR	LIVE
93	75435662	2510813	LEONARDO DA VINCI'S HORSE	TARR	LIVE
94	75435592	2507366	LEONARDO DA VINCI'S HORSE	TARR	LIVE
95	75435580	2527811	LEONARDO DA VINCI'S HORSE	TARR	LIVE
96	75434778	2517755	LEONARDO DA VINCI'S HORSE	TARR	LIVE
97	75434710	2471857	LEONARDO DA VINCI'S HORSE	TARR	LIVE
98	75434702	2540771	LEONARDO DA VINCI'S HORSE	TARR	LIVE
99	75406203	2260584	DA VINCI	TARR	LIVE
100	75388363	2763041	KARNDEAN DA VINCI	TARR	LIVE

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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
101	75356594	2745435	CONTESSA DA VINCI	TARR	LIVE
102	75328219	2369047	LEONARDO DA VINCI'S HORSE	TARR	LIVE
103	75256146	2220876	DA VINCI	TARR	LIVE
104	75166045	2113847	DA VINCI	TARR	LIVE
105	75155213	2172284	DA VINCI DESIGN	TARR	LIVE
106	75107384	2061195	DA VINCI DENTAL STUDIOS	TARR	LIVE
107	75059572	2038680	DVP DA VINCI PAINTS	TARR	LIVE
108	74324681	1781479	DA VINCI CRYSTAL	TARR	LIVE
109	74314228	1994273	DA VINCI	TARR	LIVE
110	74314224	1852360	LEONARDO DA VINCI	TARR	LIVE
111	74291348	1770018	DA VINCI	TARR	LIVE
112	73653608	1516175	DA VINCI	TARR	LIVE
113	73697211	1496647	DA VINCI SYSTEMS	TARR	LIVE
114	73487037	1338226	DA VINCI	TARR	LIVE
115	72177342	0770469	DA VINCI	TARR	LIVE

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EXHIBIT I



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78963456	3410967	DAVINCI EXPERIENCE	TARR	LIVE
2	78910492	3398556	DAVINCI GOURMET	TARR	LIVE
3	78963459	3260987	THE DAVINCI EXPERIENCE	TARR	LIVE
4	78963455	3268230	THE DAVINCI EXPERIENCE	TARR	LIVE
5	78728786		DAVINCI DIAGNOSTIC IMAGING	TARR	LIVE
6	78727505	3269975	DAVINCI STONE	TARR	LIVE
7	78705171	3277281	DAVINCI-OSITY	TARR	LIVE
8	78664179		DAVINCI KIDS	TARR	LIVE
9	78598412	3071009	DINNER WITH DAVINCI	TARR	LIVE
10	78543822	3276496	DAVINCI	TARR	LIVE
11	78477851	3081814	DAVINCI EDUCATIONAL ENTERTAINMENT	TARR	LIVE
12	78393647	2938225	DAVINCI INSTITUTE	TARR	LIVE
13	78075989		L'IL DAVINCI	TARR	LIVE
14	77455182		DAVINCI VIRTUAL OFFICE SOLUTIONS	TARR	LIVE
15	77305472		DAVINCI	TARR	LIVE
16	77290363		DON DAVINCI	TARR	LIVE
17	77144718	3394259	DAVINCI ROOFSCAPES	TARR	LIVE
18	77408937		DAVINCI	TARR	LIVE
19	77133719		DMO DAVINCI	TARR	LIVE
20	76656731		DAVINCI TEXAS INSTRUMENTS	TARR	LIVE
21	76612318	3017072	DAVINCI INVESTMENT ADVISORS	TARR	LIVE
22	76497345		YOUNG DAVINCIS	TARR	LIVE
23	76497344		YOUNG DAVINCIS	TARR	LIVE

24	76408528	2776673	DAVINCIJOBS.COM	TARR	LIVE
25	76291049	2624432	LI'L DAVINCI	TARR	LIVE
26	76278421	2653761	DAVINCI ITALIAN ORGANICS IMPORTED FROM ITALY	TARR	LIVE
27	76239660	2602721	DINNER WITH DAVINCI	TARR	LIVE
28	76239659	2743507	DAVINCI AWARDS	TARR	LIVE
29	76202882	2948485	DA VINCI SMILE ART CERAMICS	TARR	LIVE
30	76082985	2593734	DAVINCI TECHNOLOGIES INC.	TARR	LIVE
31	76082981	2678705	DAVINCI TECHNOLOGIES INC.	TARR	LIVE
32	75540188	2365226	DAVINCI	TARR	LIVE
33	75403623	2534407	LI'L DAVINCI	TARR	LIVE
34	74496459	2042588	DAVINCI GOURMET	TARR	LIVE
35	74363150	2042566	DAVINCI GOURMET	TARR	LIVE
36	74334891	1799545	COCOA DAVINCI	TARR	LIVE
37	74331405	1830795	DAVINCI	TARR	LIVE
38	73252455	1200808	DAVINCI POTEN-C	TARR	LIVE

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EXHIBIT J

	A	B	C	D	E	F
1	OWNER	MARK(S)	REGIST. NO.	SERIAL NO(s).	IC CLASS(ES)	GOODS/SERVICES
2	Texas Instruments Inc.	DA VINCI		78565344	009	Digital video semiconductors and digital video integrated circuits; digital video signal processors; and software to operate, and to develop software to operate, digital video semiconductors, digital video integrated circuits, and digital video digital signal processors; all for sale to original equipment manufacturers
3	Da Vinci Center, LLC	DA VINCI CENTER & Design & DA VINCI CENTER		78710291 & 77321258	041	Post medical doctorate degree educational services, namely, conducting classes, seminars, conferences, tutorial sessions, courses and workshops for post graduate degree medical professionals in the fields of surgery, surgical techniques, orthopedics and medicine, and development and dissemination of medical educational materials in connection therewith
4	DaVinci Dental Studios, Inc.	DA VINCI VENEERS, SMILES BY DA VINCI, DA VINCI ENGINEERED AESTHETICS, DA VINCI PORCELAIN VENEERS, DA VINCI SMILES, DA VINCI VENEERS, DA VINCI SMILE ART CERAMICS & Design	3014180, 3012293, 2061195, 3211783, 314284, 3096437, 3948485	78976332, 78976109, 78775021, 78370221, 78370219, 78357733, 76202882	005, 040,	Ceramics for use in cosmetic dentistry, dental ceramics, manufacturing of custom porcelain veneers
5	SEZ AG CORPORATION	DA VINCI	2941295	76561549	007	Apparatus, namely, machines for producing semiconductors and microelectronic semiconductor products; apparatus, namely, machines for working semfinished articles for semiconductors and silicon wafers; apparatus, namely, machines for etching, cleansing, polishing, roughening, and drying of semfinished articles for semiconductors
6	Biomerieux B.V. Corporation	DA Vinci	2870790	76248902	010	Discrete photometric analyzer for clinical use
7	Honeywell International Corporation	DA VINCI	2547768	75627993	009	Please refer to Exhibit ___ of Vanden Bosch Decl. due to length of description
8	Materdomini, Daniel	DA VINCI DENTAL STUDIOS	2061195	75107384	042	dental laboratory services
9	Rauland-Borg Corporation	DAVINCI & Design (design is daVinci)	3276496	78543822	009	Graphical user interface software, namely, software for creating graphic controls for users of networked commercial and professional digital audio signal processing systems

	A	B	C	D	E	F
10	DAVINCI EDUCATIONAL ENTERTAINMENT, INC.	DAVINCI EDUCATIONAL ENTERTAINMENT & Design	3081814	78477851	044	Providing medical information to adults and children in order to aid in learning about and exploring the human body through use of audio-visual media, namely, the internet
11	Texas Instruments Inc.	DAVINCI TEXAS INSTRUMENTS & Design		76656731	009	Semiconductor integrated circuit microchips; namely, analog, digital and mixed signal circuits; digital signal processors, microprocessors, and microcontrollers; software to operate such microchips; and software to develop software to operate such microchips
12	DaVinci Technologies, Inc.	DAVINCI TECHNOLOGIES, INC. & Design	2593734	76082985	036&042	Interactive presentation and distribution of bills, statements and customer services electronically over the global computer network, any Internet enabled device or wireless media; and Computer services, namely custom design, systems integration and technology development of computer software for communications providers that allows communication providers to perform electronic business transactions
13	DaVinci Technologies, Inc.	DAVINCI TECHNOLOGIES, INC. & Design	2593734	76082985	036&010	Computer services, namely custom design, systems integration and technology development of computer software for communications providers that allows communication providers to perform electronic business transactions; and Computer software
14	DaVinci Technologies, Inc.	DAVINCI TECHNOLOGIES, INC. & Design	2678705	76082981	009	Computer software for use to custom design computer systems integration and technology for the management of global coputer networks, Intranet and wireless applications in the fields of electronic bill transaction, tracking and management of the calling locations of customers using a wireless device, the processing of electronic transactions on a website or via a wireless device, interactive web and wireless customer service, website or wireless sevicees in the financial, healthcare, telecommunications and network operations industries, and interactive broadcasting and transmission of audio-visual programs or applications by the global computer network or wireless media

	A	B	C	D	E	F
15	Royal Consumer Information Products, Inc.	DAVINCI	2365226	75540188	009	Electronic personal information manager organizers, keyboards, styli and docking cradles for electronic personal information manager organizers, computer software for transferring data between a personal computer and an electronic personal information manager organizer.
16	Foodscience Corporation a.k.a. DaVinci Laboratories Corporation	DAVINCI POTEN-C	1200808	73252455	005	Prolonged released ascorbates



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Word Mark DA VINCI

Goods and Services IC 009. US 021 023 026 036 038. G & S: Digital video semiconductors and digital video integrated circuits; digital video digital signal processors; and software to operate, and to develop software to operate, digital video semiconductors, digital video integrated circuits, and digital video digital signal processors; all for sale to original equipment manufacturers

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78565344

Filing Date February 11, 2005

Current Filing Basis 1B

Original Filing Basis 1B

Owner (APPLICANT) Texas Instruments Incorporated CORPORATION DELAWARE 12500 TI Boulevard MS 3999 Dallas TEXAS 752434136

Attorney of Record Gary C. Honeycutt

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead

Indicator LIVE

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Word Mark DA VINCI CENTER
Goods and Services IC 041. US 100 101 107. G & S: Post medical doctorate degree educational services, namely, conducting classes, seminars, conferences, tutorial sessions, courses and workshops for post graduate degree medical professionals in the fields of surgery, surgical techniques, orthopedics and medicine, and development and dissemination of medical educational materials in connection therewith
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 02.01.01 - Busts of men facing forward; Heads of men facing forward; Men - heads, portraiture, or busts facing forward; Portraiture of men facing forward
 02.01.05 - Historical men (American); Men, famous; Presidents (American)
 02.01.31 - Men, stylized, including men depicted in caricature form
 02.11.07 - Arms; Fingers; Hands; Human hands, fingers, arms
Serial Number 78710291
Filing Date September 9, 2005
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition December 18, 2007
Owner (APPLICANT) DA VINCI CENTER, L.L.C. LTD LIAB CO FLORIDA 3020 NW 82 AVENUE MIAMI FLORIDA 33122

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CENTER" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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DA VINCI VENEERS

Word Mark DA VINCI VENEERS
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: CERAMICS FOR USE IN COSMETIC DENTISTRY. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 78976332
Filing Date January 26, 2004
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition November 9, 2004
Registration Number 3014180
Registration Date November 8, 2005
Owner (REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record Theresa W. Middlebrook
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE VENEERS APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)**SMILES BY DA VINCI**

Word Mark	SMILES BY DA VINCI
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: CERAMICS FOR USE IN COSMETIC DENTISTRY. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78976109
Filing Date	February 18, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 30, 2004
Registration Number	3012293
Registration Date	November 1, 2005
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoue Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)**DA VINCI ENGINEERED
AESTHETICS**

Word Mark	DA VINCI ENGINEERED AESTHETICS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dental ceramics
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78775021
Filing Date	December 16, 2005
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	February 27, 2007
Owner	(APPLICANT) DAVINCI DENTAL STUDIOS, INC. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Prior Registrations	2061195
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "engineered aesthetics" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
-------------	---------------	-----	-------------

 (Use the "Back" button of the Internet Browser to return to TESS)**DA VINCI PORCELAIN
VENEERS**

Word Mark	DA VINCI PORCELAIN VENEERS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Ceramics for use in cosmetic dentistry. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
	IC 040. US 100 103 106. G & S: Manufacturing of custom porcelain veneers. FIRST USE: 20060502. FIRST USE IN COMMERCE: 20060502
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78370221
Filing Date	February 18, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	February 22, 2005
Registration Number	3211783
Registration Date	February 20, 2007
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PORCELAIN VENEERS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK, SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)**DA VINCI SMILES**

Word Mark	DA VINCI SMILES
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: CERAMICS FOR USE IN COSMETIC DENTISTRY. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
	IC 040. US 100 103 106. G & S: MANUFACTURING OF CUSTOM PORCELAIN VENEERS. FIRST USE: 20060621. FIRST USE IN COMMERCE: 20060621
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78370219
Filing Date	February 18, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	March 29, 2005
Registration Number	3146284
Registration Date	September 19, 2006
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Prior Registrations	2061195
Type of Mark	TRADEMARK. SERVICE MARK

Register PRINCIPAL
Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)**DA VINCI VENEERS**

Word Mark	DA VINCI VENEERS
Goods and Services	IC 040. US 100 103 106. G & S: CUSTOM MANUFACTURE OF DENTAL VENEERS. FIRST USE: 20060113. FIRST USE IN COMMERCE: 20060113
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78357733
Filing Date	January 26, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 9, 2004
Registration Number	3096437
Registration Date	May 23, 2006
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE VENEERS APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)

DA VINCI CENTER

Word Mark	DA VINCI CENTER
Goods and Services	IC 041. US 100 101 107. G & S: Post medical doctorate degree educational services, namely, conducting classes, seminars, conferences, tutorial sessions, courses and workshops for post graduate degree medical professionals in the fields of surgery, surgical techniques, orthopedics and medicine, and development and dissemination of medical educational materials in connection therewith
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77321258
Filing Date	November 5, 2007
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	April 8, 2008
Owner	(APPLICANT) Da Vinci Center, L.L.C. LTD LIAB CO FLORIDA 3020 NW 82 Avenue Miami FLORIDA 33122
Attorney of Record	Michael B. Chesal

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CENTER" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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[Start](#)

List At:

OR

[Jump](#)

to record:

Record 64 out of 115[TARR Status](#)[ASSIGN Status](#)[TDR](#)[TTAB Status](#)*(Use the "Back" button of the Internet**Browser to return to TESS)***DA VINCI****Word Mark****DA VINCI****Goods and Services**

IC 007. US 013 019 021 023 031 034 035. G & S: Apparatus, namely, machines for producing semiconductors and microelectronic semiconductor products; apparatus, namely, machines for working semifinished articles for semiconductors and silicon wafers; apparatus, namely, machines for etching, cleansing, polishing, roughening and drying of semifinished articles for semiconductors

Standard Characters Claimed**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

Serial Number

76561549

Filing Date

November 20, 2003

Current Filing Basis

44E

Original Filing Basis

44D;44E

Published for Opposition

January 25, 2005

Registration Number

2941295

Registration Date

April 19, 2005

Owner

(REGISTRANT) SEZ AG CORPORATION AUSTRIA Draubodenweg 29 A-9500 Villach AUSTRIA

Attorney of Record

Mark Lebow

Priority Date

May 26, 2003

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead
Indicator

LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

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Typed Drawing

Word Mark	DA VINCI
Goods and Services	IC 010. US 026 039 044. G & S: DISCRETE PHOTOMETRIC ANALYZER FOR CLINICAL USE
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76248902
Filing Date	April 30, 2001
Current Filing Basis	44E
Original Filing Basis	1B;44D
Published for Opposition	September 30, 2003
Registration Number	2870790
Registration Date	August 10, 2004
Owner	(REGISTRANT) BIOMERIEUX B.V. CORPORATION NETHERLANDS BOSEIND 15 RM BOXTEL NETHERLANDS
Assignment Recorded	ASSIGNMENT RECORDED
Priority Date	October 31, 2000
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE LIST	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)

daVinci
SMILE
Art
Ceramics

Word Mark	DA VINCI SMILE ART CERAMICS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: CERAMICS FOR USE IN COSMETIC DENTISTRY. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76202882
Filing Date	January 30, 2001
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 24, 2002
Registration Number	2948485
Registration Date	May 10, 2005
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Prior Registrations	2061195
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CERAMICS" and "SMILE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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TARR Status	ASSIGN Status	TDR	TTAB Status
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IC 009. US 021 023 026 036 038. G & S: OPERATOR STATION CONSISTING OF APPLICATION SOFTWARE WHICH ACCESSES INFORMATION REGARDING WEB OR SHEET CHARACTERISTICS, AND CONTROL FUNCTIONS IMPLEMENTED IN SOFTWARE FOR MODIFYING PAPER MACHINE CONTROL; MACHINE-DIRECTION CONTROLS CONSIST OF SOFTWARE WHICH MAKES CORRECTIONS TO WEB, SHEET CHARACTERISTICS; CROSS-DIRECTION CONTROLS CONSIST OF SOFTWARE WHICH MAKES CORRECTIONS TO WEB, SHEET CHARACTERISTICS; NON-SCANNING CONTROLS CONSIST OF SOFTWARE WHICH MAKES CORRECTIONS TO PULP OR LIQUOR COMPOSITION; DISTRIBUTED CONTROL CONSISTS OF SOFTWARE WHICH TRANSFERS DATA AND CONTROL SIGNALS TO AND FROM CONTROL SOFTWARE; SOFTWARE WHICH ANALYZES A MOVING WEB OR SHEET FOR DEFECTS OR BREAKS; SOFTWARE FOR MONITORING, DIAGNOSING AND CORRECTING DISTURBANCES CAUSED BY PROCESS DEVICES, NAMELY FAN PUMPS, SCREENS IN THE STOCK APPROACH AREA, ROLL NIPS IN THE PRESS SECTION, HEADBOX PULP FLOW CHARACTERISTICS, TEMPERATURE OR LOADING VARIATIONS; SOFTWARE WHICH MONITORS PROCESS DEVICES TO DETERMINE THE NEED FOR REPAIR, SERVICING OR REPLACEMENT; SCANNERS AND SENSORS FOR MEASURING PAPER PROCESS VARIABLES, NAMELY, BASIS WEIGHT, COAT WEIGHT, MOISTURE, INFRARED MOISTURE, CALIPER, DIGITAL CALIPER, SHEET TEMPERATURE, FORMATION, STRENGTH, DIGITAL STRENGTH, ALKALI, COLOR, FLUORESCENCE, BRIGHTNESS, THICKNESS, DIGITAL GLOSS, OPACITY, NIP GAP, EXTENSIONAL STIFFNESS, SURFACE, DENSITY, SMOOTHNESS, OPACITY; ASH CONTENT, MINERAL CONTENT AND LIQUOR COMPOSITION SCANNER AND SENSOR OPTICAL AND INFRARED SENSORS AND SENSORS WHICH DETECT BETA ABSORPTION, E-RAY ABSORPTION, MAGNETIC RELUCTANCE, PIEZOELECTRIC OR TURBIDITY; COMPRISING OPTICAL, INFRARED, BETA ABSORPTION, X-RAY ABSORPTION, MAGNETIC RELUCTANCE, PIEZOELECTRIC OR TURBIDITY. SOFTWARE WHICH SORTS, CATALOGS, AND ANALYZES PAPER PLANT CHARACTERISTICS, AND PROVIDES STORED DATA UPON REQUEST TO CONTROL SOFTWARE, OPERATOR STATIONS OR OTHER DATA STORING OR DATA CONSUMING SOFTWARE SERVOMECHANISMS WHICH PROVIDE CROSS-DIRECTION AND MACHINE- DIRECTION DIRECT MODIFICATION OF PROCESS CHARACTERISTICS; SERVOMECHANISMS WHICH PROVIDE DIRECT MODIFICATION OF PULP AND LIQUOR COMPOSITION AT A SINGLE POINT; I-BEAM AND 0-FRAME TO SUPPORT UNIT HOLDING

SCANNER, COMPUTERS, MONITORS, KEYBOARDS, CABLES, TRANSMITTERS, RECEIVERS;
CABINETS HOUSING ELECTRONICS; DIGITAL CCD LINE-SCAN CAMERAS; DIGITAL VIDEO
CAMERAS ALL THE AFOREMENTIONED GOODS FOR USE IN THE SHEETING INDUSTRY. FIRST
USE: 19990305. FIRST USE IN COMMERCE: 19990430

Mark Drawing Code (1) TYPED DRAWING
Serial Number 75627993
Filing Date January 27, 1999
Current Filing Basis 1A
Original Filing Basis 1B
Published for August 29, 2000
Opposition
Registration Number 2547768
Registration Date March 12, 2002
Owner (REGISTRANT) HONEYWELL INTERNATIONAL INC. CORPORATION DELAWARE 101 COLUMBIA ROAD MORRISTOWN NEW JERSEY 07962
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record David A. Cohen
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Sat Apr 26 04:15:12 EDT 2008

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
RESULTS	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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[Start](#) List At: OR [Jump](#) to record: **Record 106 out of 115**

TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	DA VINCI DENTAL STUDIOS
Goods and Services	IC 042. US 100 101. G & S: dental laboratory services. FIRST USE: 19700900. FIRST USE IN COMMERCE: 19700900
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75107384
Filing Date	May 21, 1996
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	February 18, 1997
Registration Number	2061195
Registration Date	May 13, 1997
Owner	(REGISTRANT) Materdomini, Daniel INDIVIDUAL UNITED STATES 2700 Santa Maria Road Topanga CALIFORNIA 90290
	(LAST LISTED OWNER) DAVINCI DENTAL STUDIOS, INC. CORPORATION CALIFORNIA 22135 ROSCOE BOULEVARD WEST HILLS CALIFORNIA 91304
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Theresa W. Middlebrook
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DENTAL STUDIOS" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070611.

Renewal 1ST RENEWAL 20070611

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daVinci

Word Mark	DAVINCI
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Graphical user interface software, namely, software for creating graphic controls for users of networked commercial and professional digital audio signal processing systems. FIRST USE: 20050613. FIRST USE IN COMMERCE: 20050613
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78543822
Filing Date	January 7, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	May 16, 2006
Registration Number	3276496
Registration Date	August 7, 2007
Owner	(REGISTRANT) Rauland-Borg Corporation CORPORATION ILLINOIS 3450 West Oakton St. Skokie ILLINOIS 60007
Attorney of	

Record Lynn A. Sullivan
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Record 11 out of 38
[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

daVinci



Word Mark	DAVINCI EDUCATIONAL ENTERTAINMENT
Goods and Services	IC 044. US 100 101. G & S: Providing medical information to adults and children in order to aid in learning about and exploring the human body through the use of audio-visual media, namely, the Internet. FIRST USE: 20040628. FIRST USE IN COMMERCE: 20040802
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.07.09 - Boars; Hogs; Pigs; Pigs, boars 03.07.24 - Stylized bovines, deer, antelopes, goats, sheep, pigs, cows, bulls, buffalo, moose 26.01.02 - Circles, plain single line; Plain single line circles 26.01.12 - Circles with bars, bands and lines 26.11.02 - Plain single line rectangles; Rectangles (single line) 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
Serial Number	78477851
Filing Date	September 2, 2004
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 24, 2006
Registration Number	3081814

Registration Date April 18, 2006
Owner (REGISTRANT) DAVINCI EDUCATIONAL ENTERTAINMENT, INC. CORPORATION INDIANA
2105 NORTH KNIGHTSBIRDGE AVENUE Muncie INDIANA 47304
Attorney of Record Michelle L. Cooper
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EDUCATIONAL ENTERTAINMENT"
APART FROM THE MARK AS SHOWN
Description of Mark The mark consists of the word daVinci above a divided circle/square enclosing a pig with four arms
and four legs, with the words EDUCATIONAL and ENTERTAINMENT below the divided
circle/square.
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark DAVINCI TEXAS INSTRUMENTS

Goods and Services IC 009. US 021 023 026 036 038. G & S: Semiconductor integrated circuit microchips; namely, analog, digital and mixed signal circuits; digital signal processors, microprocessors, and microcontrollers; software to operate such microchips; and software to develop software to operate such microchips

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.01.01 - Circles as carriers or as single line borders

Serial Number 76656731

Filing Date March 16, 2006

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition September 4, 2007

Owner (APPLICANT) Texas Instruments Incorporated CORPORATION DELAWARE 12500 TI Boulevard MS3999 Dallas TEXAS 752434136

Attorney of Record Gary C. Honeycutt

Prior Registrations 1105692;2732983;2817917;AND OTHERS

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator LIVE

**Distinctiveness
Limitation
Statement**

as to "TEXAS INSTRUMENTS"

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daVinci
SMILE Art
Ceramics

Word Mark	DA VINCI SMILE ART CERAMICS
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: CERAMICS FOR USE IN COSMETIC DENTISTRY. FIRST USE: 20041101. FIRST USE IN COMMERCE: 20041101
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76202882
Filing Date	January 30, 2001
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 24, 2002
Registration Number	2948485
Registration Date	May 10, 2005
Owner	(REGISTRANT) DaVinci Dental Studios, Inc. CORPORATION CALIFORNIA 22135 Roscoe Boulevard West Hills CALIFORNIA 91304
Attorney of Record	Theresa W. Middlebrook
Prior Registrations	2061195
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CERAMICS" and "SMILE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark	DAVINCI TECHNOLOGIES INC.
Goods and Services	IC 036. US 100 101 102. G & S: Interactive presentation and distribution of bills, statements and customer services electronically over the global computer network, any Internet enabled device or wireless media. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601
	IC 042. US 100 101. G & S: Computer services, namely custom design, systems integration and technology development of computer software for communications providers that allows communication providers to perform electronic business transactions. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76082985
Filing Date	July 6, 2000
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 23, 2002
Registration Number	2593734
Registration Date	July 16, 2002

Owner (REGISTRANT) Davinci Technologies Inc. CORPORATION CANADA 360 Adelaide Street, West
Toronto ONTARIO M5V 1R7

**Attorney of
Record** Patricia B. Hogan, Esq.

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TECHNOLOGIES INC." APART
FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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TESS LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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 List At: OR to record: **Record 31 out of 38**

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 (Use the "Back" button of the Internet Browser to return to TESS)


Word Mark DAVINCI TECHNOLOGIES INC.
Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer software for use to custom design computer systems integration and technology for the management of global computer networks, Intranet and wireless applications in the fields of electronic bill transaction, tracking and management of the calling locations of customers using a wireless device, the processing of electronic transactions on a website or via a wireless device, interactive web and wireless customer service, website or wireless devices in the financial, healthcare, telecommunications and network operations industries, and interactive broadcasting and transmission of audio-visual programs or applications by the global computer network or wireless media. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.03.01 - Ovals as carriers and single line borders
Serial Number 76082981
Filing Date July 6, 2000
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition April 30, 2002
Registration

Number 2678705
Registration Date January 21, 2003
Owner (REGISTRANT) Davinci Technologies Inc. CORPORATION CANADA 360 Adelaide Street, West
Toronto Ontario CANADA M5V 1R7
Attorney of Record Patricia B. Hogan
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TECHNOLOGIES INC." APART FROM
THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark DAVINCI
Goods and Services IC 009. US 021 023 026 036 038. G & S: Electronic personal information manager organizers; keyboards, styli and docking cradles for electronic personal information manager organizers; computer software for transferring data between a personal computer and an electronic personal information manager organizer. FIRST USE: 19981102. FIRST USE IN COMMERCE: 19981102
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75540188
Filing Date August 20, 1998
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition June 29, 1999
Registration Number 2365226
Registration Date July 4, 2000
Owner (REGISTRANT) ROYAL CONSUMER INFORMATION PRODUCTS INC CORPORATION
 DELAWARE 379 CAMPUS DRIVE, 2ND FL SOMERSET NEW JERSEY 08873
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record RICHARD S. ROBERTS
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead
Indicator **LIVE**

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Typed Drawing

Word Mark	DAVINCI POTEN-C
Goods and Services	IC 005. US 018. G & S: Prolonged Released Ascorbates. FIRST USE: 19790202. FIRST USE IN COMMERCE: 19790206
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73252455
Filing Date	March 3, 1980
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 20, 1982
Registration Number	1200808
Registration Date	July 13, 1982
Owner	(REGISTRANT) Foodscience Corporation a.k.a. DaVinci Laboratories CORPORATION VERMONT 20 NEW ENGLAND DRIVE ESSEX JUNCTION VERMONT 05452
Attorney of Record	LAWRENCE H MEIER
Prior Registrations	1144672
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20021009.
Renewal	1ST RENEWAL 20021009
Live/Dead Indicator	LIVE

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Matthew T. Vanden Bosch
Signature

Matthew T. Vanden Bosch
Name

May 9, 2008
Date

EQ 655048724 US
"Express Mail" Mailing Label Number

Applicant's Response to Motion for Summary Judgment (22 pgs);

Declaration of Matthew T. Vanden Bosch I/S/O

Applicant's Response to Motion for Summary Judgment (4 pgs);

Exhibits A-J

Declaration of Thomas P. Boyle, M.D. I/S/O

Applicant's Response to Motion for Summary Judgment (3 pgs);

CERTIFICATE OF SERVICE

Intuitive Surgical, Inc. v. DaVinci Radiology Associates, P.L.
Opposition No. 91175319

On May 9, 2008, I hereby certify that I served a copy of the following:

1. Applicant's Response to Motion for Summary Judgment;
2. Declaration of Matthew T. Vanden Bosch in Support of Applicant's Response to Motion for Summary Judgment; and
3. Declaration of Thomas P. Boyle, M.D. in Support of Applicant's Response to Motion for Summary Judgment

By "Express Mail" to:

Michelle J. Hirth, Esq.
Embarcadero Four, 17th Floor
San Francisco, California 94111

Executed on May 9, 2008, at Boynton Beach, Florida.

A handwritten signature in black ink, reading "Matt Vanden Bosch", written over a horizontal line.

Matthew T. Vanden Bosch